



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. APPLICATION NO. 7 OF 2018

IN THE MATTER OF THE ESTATE OF DOUGLAS GACHU MURAGE ... DCD

AND

SYMON MURAGE GACHU.....APPLICANT

V E R S U S

RICHARD MANEGENE GACHU.....RESPONDENT

RULING

1. The applicant has filed an application dated 08/02/2018 seeking that the court be pleased to transfer the Succession Cause No. 186 of 2016 from Gichugu Law Courts at Baricho Law Courts.

2. That the Gichugu Law Courts directed on 02/08/2017 that since it had no jurisdiction, the Executive Officer do transfer the file to Baricho Law Courts. That the matter was mentioned on 22/08/2017 before Baricho Law Courts which stated that the relevant procedure was not met to enable transfer of the file. Thereafter the file was returned to Gichugu Law Courts and has been inactive since the court lacks jurisdiction. That the matter had initially been filed at Kerugoya High Court under Succession Cause No. 144 of 2013 but was later transferred to Gichugu Law Courts and given a new number Succession Cause No. 186 of 2016.

3. In response, the respondent states that on 10/05/2016, the High Court ordered the matter be transferred to Gichugu Law Courts and the same was never reviewed or appealed against. The Gichugu Law Court heard the application for confirmation of grant and affidavit of protest and delivered a ruling on 01/02/2017 whereupon the certificate of confirmation of grant was issued. The applicant applied for review/setting aside of orders which is pending and also applied to have the file transferred to Baricho Law Courts.

4. That **Section 3 (2) of the Magistrate's Court Act Cap 10** gives Gichugu Law Court jurisdiction to hear and determine this matter. That the Gichugu Law Courts stated that the estate of the deceased falls within the territorial jurisdiction of Baricho Law Courts which is not conclusive that Gichugu Law Courts lacks jurisdiction.

Issues arising:

1. Transfer of suit.

Section 18(1)(b) of the Civil Procedure Act provides: -

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

(i) try or dispose of the same; or

(ii) (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.”

Refer to **Aberdare Investments –v- Bernard Wachira & 5 Others (2014) eKLR**

The Court held;

“It is clear from those provisions that the court with jurisdiction to transfer a suit from or to a subordinate court is the High Court, or courts of similar status”.

5. The High Court transferred the matter to Gichugu Law Courts which heard the confirmation of grant and protest filed. However, later Gichugu Law Courts on its own motion held that it does not have territorial jurisdiction to deal with the matter therefore it ordered that the matter be transferred to Baricho Law Courts which has jurisdiction. The matter has since not proceeded since the procedure for transfer of suits had not been followed.

6. This court has Jurisdiction under **Section 18(1)(b)(ii) of the Civil Procedure Act** to transfer the suit from Gichugu Law Courts to Baricho Law Courts and in view of the fact that the estate of the deceased is in Baricho it will only be fair and just that the matter be dealt with in Baricho. Both Gichugu Law Courts and Baricho Law Courts are within Kirinyaga County therefore no prejudice will be occasioned in the said transfer.

7. There is no dispute that the estate of the deceased is within the territorial jurisdiction of Baricho Court. Gichugu court stated that it lacked territorial jurisdiction to hear and determine the matter. The applicant has moved to this court so that the court can order transfer of the case to Baricho Court.

8. I find the Magistrate at Gichugu had no jurisdiction to transfer the case to Baricho. The application is properly before this court as this is the court with jurisdiction.

9. I find that the application has merits. The High Court had intended to transfer the matter to the court with jurisdiction and ordered the transfer to Gichugu Court instead of Baricho Court. There will be no prejudice if this is remedied.

10. I order that succession cause No. 186/2016 Gichugu Law Courts be transferred to Baricho Law Court for hearing and determination before a Magistrate with jurisdiction.

11. Each party to bear its own costs.

Dated at Kerugoya this 17th day of October, 2019.

L. W. GITARI

JUDGE