



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 631 OF 2013

IN THE MATTER OF THE ESTATE OF KARUNGU MURONDO (DECEASED)

AND

GRACE WATHITHA KARUNGU.....APPLICANT

VERSUS

SUSAN WANGIGE.....RESPONDENT

R U L I N G

1. The application dated 15th December, 2016 seeks for orders of transfer of this succession cause/petition to High Court at Kerugoya for hearing and final determination. The application is supported by the affidavit of Grace Waithaka Karungu.
2. The grounds supporting the application are that the subject matter herein LR. No. Kabare/Njiku/169 measuring 7.40 acres is located at Kabare ward in Kirinyaga East District in Kirinyaga County. The matter ought to have been filed in High Court Kerugoya because the land is within its immediate jurisdiction. It is also contended that the hearing of the matter at Kerugoya will facilitate better and fair adjudication of the dispute or make a further transfer to Gichugu Law Courts. According to the applicant there is no valid reason why the matter should remain before the High Court Embu and especially due to the undisputed location of the subject matter.
3. The application is opposed on grounds that this court has unlimited original and inherent jurisdiction to hear and determine this cause. The respondent stated that the summons seeking transfer is frivolous, without merit and is ill calculated to delay the determination of the cause. It is further contended that it is in the interests of justice constitutionalism, fairness, equity and conscience considering the circumstances surrounding the cause that it be heard and determined in this court.
4. The respondent alleges that the applicant secretly and without disclosure petitioned this court for grant of letters of administration intestate without the consent and knowledge of the majority of the beneficiaries. The grant of letters of administration intestate was issued on 5th of February, 2014. The objector came to learn of the cause when it was scheduled for confirmation and immediately entered appearance.
5. Section 15 of the Civil Procedure Act guides this court in determining this application. It provides that civil suits shall be instituted where the defendant resides or where the cause of action arises. As for a succession cause, what should be considered in filing a cause is the location of the subject matter and its

geographical jurisdiction. The general practice is that a cause is filed in the court within the geographical jurisdiction of the subject matter.

6. The only asset of the deceased is LR. Kabare/Njiku/169. It is not in dispute that the land is located in Kabare ward of Kirinyaga County. There is a High Court in Kirinyaga County situated at Kerugoya. There is also a Magistrate's court at Gichugu presided over by a Principal Magistrate. This cause ought to have been filed in any of the two courts depending of course on the value of the estate and the pecuniary jurisdiction of the court.

7. The respondent's allegation that the application is frivolous and without merit is baseless since no reasons were given. It is also alleged that this court has unlimited original and inherent jurisdiction to hear and determine this cause. The statement is correct but the consideration of the geographical jurisdiction takes precedence over the unlimited jurisdiction of the court. The respondent also raised issues concerning the fact that the applicant filed this cause secretly without informing the other beneficiaries which matters I do not find relevant to this application.

8. The value of the deceased's land is indicated in Form P&A 5 as Kshs.500,000/- at the time of filing this cause which was in 2013. Taking into consideration the probable appreciation of land over the years, I am of the considered opinion that the market value of the land cannot go beyond Kshs.3 million. The jurisdiction of the magistrate was increased to a maximum of Kshs.20 million for Chief magistrate and Kshs.5 million for Resident magistrate. This cause would be conveniently heard at the Principal magistrate Gichugu who is possessed of competent jurisdiction. I find it not necessary to transfer this case to Kerugoya High Court just for that court to later make another transfer order to Gichugu.

9. I find the application merited and it is hereby granted. It is hereby ordered that this cause be transferred to Gichugu Law Courts for hearing and determination.

10. Costs in the cause.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF APRIL, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for Mugo for the respondent.