



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
MISC. SUCC. CAUSE NO. 38 OF 2016
IN THE MATTER OF THE ESTATE OF THE LATE JUSTIN MUTUMA
MBWIRIA(DECEASED)

AND

STEPHEN NKONGE MBWIRIA.....1ST PETITIONER

ELOSY GATWIRI MBWIRIA.....2ND PETITIONER

- VERSUS -

STELLA KARWITHA RIUNGU.....PROTESTOR

RULING

1. Before me is a summons dated 1st September, 2016 brought under sections 47 and 48 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules. It seeks that Chuka SPMC Succession Cause No.248 of 2016 be transferred to the Chief Magistrate's Court Meru for hearing and determination. The grounds upon which the Summons was made were set out on the face of the Summons and the Supporting Affidavit of Stella Karwitha Riungu (*"the Applicant"*).

2. These grounds were that; the parties hail from Kaaria and Gakiri location in Imenti South, Meru County; that the courts with jurisdiction over the subject matter are therefore the Chief Magistrate's Court, Meru and Nkubu Senior Resident Magistrate's Court; that the matter was filed in Chuka Court with a view to avoid the citation No.63 of 2016 pending before the Meru Chief Magistrate's Court; that the distance between the parties' residences and Meru Law Court is less than 30 Km as opposed to over 45 Kms to Chuka. Mr. Kiogora learned Counsel for the Applicant submitted that since this is a contested matter, there will be expenses that will be involved by way of transportation of witnesses. He further submitted that the matters raised in the Replying Affidavit are matters for trial. Counsel urged the application be allowed.

3. The Application was opposed through the Replying Affidavit of Stephen Nkongwe Mbwiria sworn on 30th September, 2016. It was contended that he was a brother to the deceased who had died leaving no spouse; that the deceased lived in Kaaria Location that borders Maara Location of Tharaka Nithi County; that Chuka Law Courts is only about 20 Kms from where the deceased lived but over 53 Km from Meru. That the Applicant was not married to the deceased; that the deceased had appointed Elosy Gatwiri the sister as next of kin and that in the circumstances, the application should not be allowed. Mr. Kijaru learned Counsel for the Respondents submitted that the citation in Meru was filed on 20th June, 2016 to defeat the subject Succession Cause that had been filed on 6th June, 2016 in Chuka; that Chuka was near the residences of the parties as opposed to Meru and that, in any event, the Applicant has no locus standi

in the matter. Counsel urged that the application be dismissed,

4. I have considered the Affidavits on record and the submissions of learned Counsel. The application is for transfer of a Succession Cause from the Chuka Senior Resident Magistrate's Court to the Meru Chief Magistrate's Court. Of course this court has that jurisdiction. The principles applicable in such an application are; the subject matter, the court within the local limits of the subject matter and the convenience of the parties and their witnesses.

5. It is not in dispute that the deceased hailed from Kaaria Location which is said to border Maara Location of Tharaka Nithi, Kaaria Location itself is in Meru County. The parties also hail from Meru County. The Chief Magistrate's Court Meru, is about 31 Km from Igoji where the parties are said to reside while Chuka Court is only 22 Km. Since the parties indicated that the matter is highly contentious and there will be need to call witnesses, in the interests of justice, the trial should be conducted as near as possible where the parties come from. To my mind, the nearest court to the parties will be Nkubu Senior Resident Magistrate Court which is less than two (2) Kilometres from the parties' residences.

6. Accordingly, I will allow the application and order that the Chuka Senior Principle Magistrate's Court, **Succession Cause No. 248 of 2016 In the Matter of the Estate of the Late Justus Mutuma Mbwiria** be transferred to the Senior Resident Magistrate's Court Nkubu for hearing and determination. This being a family matter, I will make no orders as to costs.

It is so ordered.

DATED and delivered at Chuka this 3rd day of November, 2016

A.MABEYA

JUDGE

Ruling read and delivered in open court in the presence of all the parties. File be closed.

A.MABEYA

JUDGE

3/11/2016