



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CASE NO. 59 OF 2011

IN THE MATTER OF THE ESTATE OF BENARD SITIENEI (DECEASED)

BENARD SITIENEI.....APPLICANT

VERSUS

LEAH WANGARI SITIENEI.....PETITIONER

RULING

1. The Applicant who is the father of the Deceased herein has filed a Chamber Summons dated the 1st of August, 2014 under the provisions of Rules 49, 59 and 73 of the Probate & Administration Rules, seeking for orders that;
 - (1) Spent
 - (2) The entire Petition be transferred and applications therein be transferred to Kericho High Court for hearing and determination.
 - (3) Necessary directions be given
 - (4) Costs of the application be borne by the Respondent.
2. The application is supported by an Affidavit sworn by the Applicant on 1st August, 2014 wherein he deposed that;

APPLICANTS SUBMISSIONS

3. That he was born in 1925 and is aged 90 years and his health was failing and so he is not able to travel to Nakuru to attend to the matter.
4. That the deceased's last place of residence was in Kericho and this is attested to in the affidavit and also evidenced in the Death Certificate, annexed to the supporting affidavit.
5. That there is also another Succession Cause No. 115/2011 filed by the applicant herein, in Kericho and there is a possibility that the two courts may issue conflicting orders.
6. So as to avoid such an outcome the applicant urges the court to exercise its discretion to grant the order for the transfer of the matter for purposes of consolidation.

PETITIONERS SUBMISSIONS

The application is opposed and reliance is placed on the Replying Affidavit made by the Respondent herein on the 24/11/2014.

That the Applicant is the Respondent's father in law and it is not in dispute that she is the legal wife of the deceased. Though the applicant is aged 90 years the same is not an issue for the court to take into consideration.

Objection is raised to the transfer of the Nakuru file to Kericho for the following reasons;

Directions on how to proceed in the matter have already been given and the Nakuru Succession Cause is ready for hearing.

That the applicant has a vested interest in the Kericho Succession Cause and the atmosphere there is hostile and the Petitioner will be greatly prejudiced as the applicant has made no provision for the Petitioner/Respondent and her family, therein and she is apprehensive that the applicant intends to disinherit her, thus leaving her destitute.

That the subject matter of the succession cause relates to service benefits and no land is involved.

The petitioner urges the court to exercise its discretion and that the matter be heard and disposed of in Nakuru.

ISSUES FOR DETERMINATION

After taking into consideration the submissions of the respective parties this court finds the following as the only issue for determination;

Whether to order for transfer and consolidation of the two succession causes;

ANALYSIS

It is not in dispute that the deceased died intestate and that there are two succession causes filed over the same estate. One having been filed in the High Court at Nakuru by the Petitioner herein and another filed by the deceased's father in the High Court at Kericho.

The Applicant has not disputed that the Petitioner herein was the legal wife of his deceased son Bernard Sitienei and the provisions of Section 66 of the Law of Succession Act as read together with Rule 7 (7) of the Probate and Administration Rules provide that the surviving spouse ranks in priority over everybody else for purposes of taking out Letters of administration. Clearly the right of her father in law would then rank after that of the Petitioner/Respondent.

This court is hesitant to make any further analysis on the locus standi of the father of the deceased and leaves this issue to be determined by the court that will be seized of the matter at its hearing and final determination.

So as to avoid conflicting orders being made and also for the expeditious disposal of the matters there is need that the two matters be disposed of together and therefore there is need for the transfer and consolidation of the two matters.

This court reiterates that the Petitioner ranks in priority over everyone else and for that reason alone I shall allow her matter to remain in Nakuru.

FINDINGS AND DETERMINATION

For the reasons set out above this court finds that the application is lacking in merit and is hereby dismissed.

The parties are at liberty to apply for the transfer of Kericho Succession Cause No.115 of 2011 to Nakuru High Court for consolidation with the cause herein.

Each party to bear their own costs.

It is so Ordered.

Dated, Signed and Delivered at Nakuru this 10th day of February, 2015.

A. MSHILA

JUDGE