

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC SUCCESSION CAUSE NO. 54 OF 2015

IN THE MATTER OF THE ESTATE OF CHOMBA NDICHU (DECEASED)

ALFRED MUGO MBICARI.....APPLICANT

VERSUS

NJIRU MBICARI.....RESPONDENT

RULING

This is an application for transfer under Rules 49 and 73 of the Probate and Administration of Rules, (rules made pursuant to Chapter 160 , Laws of Kenya), in respect of succession cause No. 67 of 2012, which is pending for hearing in the Principal Magistrate's Court at Siakago. The transfer is sought because that magisterial court lacks monetary jurisdiction. Its jurisdiction is only up to Kshs 100,000/-.

The application is opposed by the respondent. In support of the opposition to the transfer, the respondent has filed a replying affidavit. According to counsel for the respondent, there is no evidence that the estate is worth more than Kshs 100,000/-. Furthermore, he has alleged that there is pending for hearing a preliminary objection in that magisterial court. He has also submitted that the transfer sought is meant to frustrate the ruling in respect of that preliminary objection.

I find that there is no proof that the magistrate's court lacks monetary jurisdiction to entertain and determine the matter in issue. There is no valuation report to substantiate the claim by the applicant that that court lacks jurisdiction.

In the light of the foregoing I find that the applicant has not made out a case for transfer of the succession cause to this court. And for this reason the application is hereby refused, with liberty to re-apply.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **3rd** day of **NOVEMBER .2015**

In the presence of both counsel

Court clerk Nyaga

J. M. BWONWONGA

JUDGE

03.11.15.