



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 662 OF 2014

IN THE MATTER OF THE ESTATE OF SAMMY NJENGA KAMAU (DECEASED)

JOHN KAMAU NJENGAPETITIONER/APPLICANT

VERSUS

SIMON MUCHIRI KAMAUOBJECTORS/RESPONDENTS

JOHN NJENGA KAMAU

R U L I N G

1. John Kamau Njenga (hereinafter the Applicant), filed a Chamber Summons dated 4th December, 2014 in respect of the Estate of the deceased Sammy Njenga Kamau, who died on 29th November 2013. The application is seeking for orders that:
 - i. Machakos High Court Succession Cause No. 361 of 2014 be transferred from Machakos High Court to this Court and be consolidated with High Court Succession Cause No. 662 of 2014 for trial and determination.
 - ii. The rent proceeds from rental house on L.R. No. LTK/EMPERON/619 be deposited in this court until the rightful Petitioner/Administration is determined between the Applicant and one Jane Wanjiru Nyatea.
 - iii. The Petitioner/Objector, her servants or agent be restrained from interfering with the properties left behind by the deceased until the rightful administrator is determined.
2. The application is premised on grounds that the Estate of the deceased is the same in both Nairobi High Court succession cause No. 662 of 2014 and Machakos High Court Succession Cause No.361 of 2014; that there is dispute as to who is the rightful Petitioner to the deceased's Estate; that both Petitioner, at Machakos and Nairobi are claiming entitlement to inherit the deceased's Estate and that the transfer of Machakos High Court Cause to this court will assist the court in arriving at a fair and just decision.
3. The Applicant swore a supporting affidavit in which he deponed that he petitioned for Letters of Administration in respect of his late father's Estate on 20th March, 2014. That later on 27th May 2014, another Petition in respect of the same Estate was filed at Machakos High Court in Succession Cause No. 361 of 2014 by Jane Wanjiru Nyatea (herein the Objector) the deceased's wife. That Simon Njenga Kamau and John Njenga Kamau, deceased's sons, filed an objection to her petition claiming that they are beneficiaries to the Estate of the deceased.

4. The Objectors in their affidavit in support stated that the Applicant in Succession Cause No. 361 of 2014 is not entitled to the Estate of the deceased. They also deponed that the deceased owned L.R. No. LTK/EMPERON/619 in which the Petitioner in Cause No. 361 of 2014 collects rent, and also interferes with the properties of the Estate. They pointed out that there is a contradiction between the two chiefs' letters issued to the Applicant and the Objector as to who is entitled to inherit the deceased's estate. The Applicant herein therefore, prays that the two causes be consolidated and be heard together in order to determine the rightful beneficiaries.
5. In her replying affidavit, the Respondent herein deponed that she is the widow of the deceased and the rightful person to administer the Estate of the deceased. She avers that the Applicant's application is bad in law and is an abuse of the court process since it does not disclose material facts relating to the Estate and in particular, the place where the succession Cause should have been filed.
6. The Respondent also avers that she made the right choice to file the succession Cause No. 361 of 2014 in Machakos High Court where the deceased was domiciled. She stated that the property the subject matter of the cause is located in Loitokitok, Kajiado County, which is within the jurisdiction of Machakos High Court. She further avers that the Applicant did not consult her when he filed Succession Cause No. 662 of 2014. That he made the application in order to disinherit the deceased's rightful family and by misrepresentation and falsehoods, and by colluding with other parties to alienate, waste and dispose the assets of the deceased.
7. The Respondent annexed copies of cautions filed at the Lands office against the subject assets. She urged the court to order that succession cause No. 662 of 2014 be transferred to Machakos High Court and be consolidated with cause No. 361 of 2014 at Machakos.
8. Parties filed brief submissions. Mr. Nyambane Omosa learned counsel appearing for the Applicant, filed submissions dated 18th September 2015 in which he raised two issues for determination. The first was on jurisdiction and the other was who the rightful petitioner ought to be. Mr. Kinyanjui learned counsel for the Respondent filed submissions dated 9th October 2015 and raised five issues for determination as follows:
 - i. Jurisdiction
 - ii. The existence of two causes relating to the same estate
 - iii. Who the rightful petitioner ought to be
 - iv. Whether the rental income from the estate should be deposited in court in the interim, and
 - v. Claims of perjury

Upon careful consideration of the grounds, the affidavits and the submissions and the authorities laid before me, I am of the view that the only issue that needs concern us at this stage is that of jurisdiction. In the case of the owners of the Motor Vessel "**Lillian S**" versus **Caltex |Oil (Kenya) Ltd (1989) KLR1**, the learned judges of the Court of Appeal (Nyarangi, Masime and Kwach JJA, as they then were) said of the issue of jurisdiction at page 14 of their decision as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of the proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

It is therefore clear that the question of jurisdiction since it is in issue, must be determined before the court can proceed to determine any other issue in this cause.

9. On the issue of jurisdiction Mr. Kinyanjui, argued for the Respondent that under gazette Notice

No. 1756 of 27th February 2009, the Chief Justice Gicheru (as he then was), set out judicial administrative Districts relating to the filing of suits among others in proper courts. That the parties to succession cause No. 361 of 2014 and cause 662 of 2014 hail from Kajiado District which falls under Machakos. That the right court to file the succession matters from Kajiado District as of then, was therefore Machakos High Court.

10. Mr. Omosa urged for the Applicant that the place of death contentious as the death certificate states that the late Sammy Njenga Kamau died at Mbagathi District Hospital as indicated in Gazette Notice No. 4379 dated 27th June 2014. That the Petition ought to have been filed within the locality of the deceased last known place of residence or domicile which is within the jurisdiction of this court. He also pointed out that the date on which this Petition was filed, that is 26th March 2014 and date which Respondents Petition was filed, that is 29th May 2014, creates an ambiguity. He submitted that according to the Civil Procedure Rules, no suit ought to commence concerning the same parties if there exists a proceeding suit between the same parties and concerning the same matter.
11. Indeed by the provisions of **Section 47 Law of Succession Act**, the High Court shall have jurisdiction to entertain any applications and determine any dispute under this Act and to pronounce any such decrees and make such orders therein as may be expedient.
12. From the record however, it is not disputed that the deceased died domiciled in Kiserian within Kajiado District. It is also not in dispute that all the properties of the Estate are situated within Kajiado District and all the parties hail from the said District. Mr. Kinyanjui argued that the Applicant did not issue any citation to the Respondents or their family to accept or refuse to petition for the letters of administration. This would mean that the widow did not have notice of Succession Cause No. 662 of 2014 when she filed Succession Cause No. 361 of 2014. In view of the foregoing the Applicant's application dated 4th December 2014 is denied.
13. It is meet that succession cause No. 662 of 2014 be transferred to Machakos High Court, for directions as to whether or not it shall be consolidated with Succession Cause No. 361 of 2014 and whether the causes shall be transferred to the newly opened Kajiado High Court, where the deceased was domiciled, both parties to the two succession causes hail from, and the assets of the deceased are located.

SIGNED DATED and DELIVERED in open court this **10th day of November 2015**.

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L. A. ACHODE

JUDGE

In the presence of for the Applicant

In the presence of..... for the Respondent