



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Application 49 of 2012

**IN THE MATTER OF THE ESTATE OF WILLIAM NDWIWA MANGE alias WILIAM
MUANGE – DECEASED**

AND

IN THE MATTER

1. JOHN MBONDO NDWIWA

2. KENNEDY MAWIOO NDWIWA

3. PRISCILLA KANINI NDWIWA PETITIONERS/RESPONDENTS

RULING

This is an application by way of Notice of Motion dated 8th March 2012 brought under Section 47 of the Law of Succession Act (Cap 160) and Section 18 of the Civil Procedure Act (Cap 21). It has four (4) prayers, two of which have been spent as follows:-

- 1. (spent).**
- 2. THAT, Succession Cause No. 36 of 2011 Estate of William Muange of the Principal Magistrate's Court at Makueni be transferred to the High Court of Kenya at Machakos.**
- 3. (Spent).**
- 4. THAT, the costs of this application be in the cause.**

The application has grounds on the face of the Notice of Motion. The main ground is that the Principal Magistrate at Makueni lacked jurisdiction to hear the succession matter, as the value of the estate was over Kshs. 8 Million.

This is an application for transfer of a succession cause from the subordinate court to the High Court. It is not opposed. Under Section 48 (1) of the Law of Succession Act (Cap 160), the subordinate court can only adjudicate on succession causes in which the value of the estate does not exceed Kshs.100,000/= . It provides:-

48(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such

decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings.

The High Court has unlimited jurisdiction in succession matters. The Makueni court falls under the administrative jurisdiction of the High Court in Machakos. It has been stated that the estate is worth more than Kshs.8 Million while the said court has jurisdiction in succession matters whose gross value of the estate is up to Kshs.100,000/=. It follows that if the succession case is left to proceed at the Makueni court, an illegality will be committed. That will not be in the best interests of justice or in the best interest of the estate of the deceased or the beneficiaries. I find justification in the request for the transfer of the succession cause. This court is required to administer substantive justice in accordance with the provisions of Article 159 (2) (d) of the Constitution. The transfer of the succession cause from the subordinate court to the High Court will be in line with the Constitutional principle of administering substantive justice. I will therefore allow the application.

Consequently, I allow the application and grant prayer 2. Costs in the cause.

Dated and delivered at Machakos this 3rd day of **October** 2012.

George Dulu
Judge

In presence of:-

Mrs Katunga for Petitioners/Respondents

N/A for 1st Petitioner

Nyalo – Court clerk