

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
MISCELLANOUS APPLICATION NO. E030 OF 2026
IN THE MATTER OF THE ESTATE OF MORRIS KAGOIYA
KUIRA ALIAS KAGOIYA
KUIRA.....DECEASED

PETER MUNGAI KAGOIYA.....1ST
PETITIONER/APPLICANT

JULIUS NDUNGU KAGOIYA.....2ND
PETITIONER/APPLICANT

RULING:

1. This matter is coming for hearing of a Notice of Motion dated 26th February,2026 in which the Applicant is seeking for orders that:
 - a) ***This Honourable Court be pleased to withdraw Succession Cause No. 001 of 2026 filed at Magistrate's Court at Gatanga Mobile Court for lack of Jurisdiction.***
 - b) ***This Honourable Court be pleased to transfer the said Succession Cause No. 001 of 2026 pending at the Magistrate's court at Gatanga mobile court and all proceedings pending at Murang'a, Family Division for hearing and disposal.***
2. The application is prescribed on the grounds set out on its face and the supporting affidavit sworn on JULIUS NDUNGU KAGOIYA the 2nd Petitioner/Applicant on even date.

3. I note that the same is an ex parte application, hence no requirement for a response thereto.

4. I also note that the applicants have relied on the provision of **Section 3A,15 and 18 of the Civil Procedure Act** and **Order 50 Rule 1** of the **Civil Procedure Rules** in seeking the orders in the application:

5. **Section 3A of the Civil Procedure Rules** provides that:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

6. **Section 15(a) of the Civil Procedure Rules** provides that:

“(a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain;”

7. **Section 15(b) of the Civil Procedure Rules** provides that:

“any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution;”

8. **Section 15(c) of the Civil Procedure Rules** provides that:

“the cause of action, wholly or in part, arises.”

9. The applicants have invoked the jurisdiction of this court to withdraw and transfer a case instituted in a subordinate court by citing **Section 18 of the Civil Procedure Act** which states:-

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage— (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter — (i) try or dispose of the same; or (ii) transfer the same for trial or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn. (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed

from the point at which it was transferred or withdrawn.”

10. A reading of the grounds upon which the application is predicated clearly confirm that the Applicants have not disputed that the suit was filed in court without territorial jurisdiction to hear the same. What they have raised is an objection to the pecuniary jurisdiction of the Resident Magistrate’s Court which only has jurisdiction to handle matters where the value of the Estate is Kenya Shillings Twenty Million Shillings only (Kshs 20,000,000/=). It will be noted that the value of the Estate of the Deceased, **MORRIS KAGOIYA KUIRA** alias **KAGOIYA KUIRA** has been put at Kenya Shillings (Kshs 24,000,000). Indeed, it’s value is slightly beyond the pecuniary jurisdiction of a Magistrate’s court.

11. In view of the above finding and or observation, the Notice of Motion application be and is hereby allowed pursuant to the provisions of **Order 18 of the Civil Procedure Act** with orders issuing that:

a) Succession Cause No. 001 of 2026, in the matter of the Estate of **MORRIS KAGOIYA KUIRA ALIAS KAGOIYA KUIRA** (DECEASED) filed at the Magistrate’s Court at Gatundu mobile court under Kandara Law Courts be and is hereby withdrawn for want of pecuniary jurisdiction.

b) The said **Succession Cause No. 001 of 2026** pending at the Magistrate’s Court at Gatanga Mobile Court together with all the proceedings therein be transferred to the

Family Division, High Court, Murang'a for hearing and determination.

- c) The Deputy Registrar to facilitate the opening of the Probate and Administration Succession Cause upon receipt of the said lower court filed for further directions.

RULING DELIVERED THIS 22ND DAY OF APRIL, 2026.

**HON. D. CHEPKWONY
JUDGE**