



In re Estate of M’riria M’irambu alias Wilson Njoka (Deceased) (Miscellaneous Succession Cause E004 of 2023) [2024] KEHC 359 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEHC 359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE E004 OF 2023**

LW GITARI, J

JANUARY 25, 2024

**IN THE MATTER OF THE ESTATE OF M’RIRIA
M’IRAMBU ALIAS WILSON NJOKA (DECEASED)**

BETWEEN

CIANTHUNI WILSON NJAGI 1ST APPLICANT

SAMUEL GITONGA NJAGI 2ND APPLICANT

AND

HUMPREY GITARI KENYA 1ST RESPONDENT

HELLEN KAGWIRIA MBAKA 2ND RESPONDENT

RULING

1. By a Notice of Motion application dated 11th April, 2023, the Applicants herein are seeking the transfer of Chuka Chief Magistrate’s Court Succession Cause No. 77B of 2020 to this Court for hearing and determination.
2. The said Application is premised on the grounds that:
 - a. The Magistrates court has no pecuniary jurisdiction to hear and determine the matter.
 - b. The estate of the deceased M’Riria M’Irambu is worth 52,000,000/=.
 - c. No prejudice shall be suffered by the Respondent if the orders sought are granted.
 - d. It is in the interest of justice that this Application be allowed.
3. The Application is further supported by the affidavit sworn on 11th April, 2023 by Samuel Gitonga Njagi, the 2nd Applicant therein. He deposes that he filed Chuka Chief Magistrate’s Court Succession Cause No. 77B of 2020 in respect of the estate of the deceased. That at the time of filing the said suit, he



had not conducted a valuation of the estate of the deceased. That a valuation of the estate has now been done and that it is evident from the valuation report attached to his aforesaid affidavit that the property forming the estate of the deceased is valued at over Kshs. 52,000,000/=.

4. The 1st Respondent does not oppose the application. On the other hand, the 2nd Respondent, raised a notice of preliminary objection dated 17th April, 2023 in response to the Application. The objection is premised on the following grounds (reproduced verbatim):

- a. That the magistrates court where the petition was filed has no jurisdiction to hear and determine this petition for grant of probate intestate. Jurisdiction is everything and without jurisdiction the Court has no option but to down its tools. It is not in doubt that though the High Court has discretionary powers to order transfer of a matter from the subordinate court to the high court, a matter can only transferred if the Court from which the Applicant is seeking to have the matter transferred from had jurisdiction over the said matter and the Applicant has satisfied the Court that the transfer is necessary.
- b. The general powers of the court to transfer suits under Section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the suit was filed in a court without jurisdiction.
- c. The high court has reaffirmed this position in numerous decisions including *Gaikia Kimani Kiarie v Peter Kimani Kiramba* [2020] eKLR and *Abraham Mwangi Wamigi v. Simon Mbiriri Wanjiku & Another* [2012] eKLR where the Court held that:

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi vs. Musirambo* (supra), Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Sheikh vs. Edward Nderitu Wainaina & Others* (supra), Koome, J (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the was filed in a court without jurisdiction. A similar view was taken by the same Judge in *Rainbow Manufacturers Limited vs. National Bank of Kenya* (supra).”

5. The Application was consequently canvassed by way of written submissions.
6. On behalf of the Applicants, it was submitted that the High Court has discretionary powers to order transfer of a matter from the subordinate court to the High Court. That this being a succession cause, the key objective is to ensure that the property of the deceased devolves to the heirs and/or beneficiaries of the estate of the deceased. That as such, the beneficiaries stand to suffer great loss and prejudice in the event that the orders sought herein are not granted.
7. It was further the Applicants’ submission that since the filing of this matter in 2020, the property of the deceased, being the aforesaid land, may have appreciated in 3 years hence its valuation at Kshs. 52,000,000/= in 2023. Citing the case of *Rest Security Services Ltd. V. Multiple ICD Kenya Limited* [2020] eKLR, it was the Applicants submission that no prejudice would be visited upon the Respondent or any party in the event that this application is allowed.
8. On the merit of the 2nd Respondent’s preliminary objection, it was the submission of the Applicants’ submission that in view of the provisions in Rule 63 of the *Probate and Administration Rules*, the



2nd Respondent cannot rely on the provisions under the *Civil Procedure Act* as this is a succession cause. It was thus their contention that the objection raised by the 2nd Respondent is an abuse of the court process, materially defective and incompetent and should thus be dismissed and/or struck out forthwith with costs.

9. On behalf of the 2nd Respondent, it was conceded that the magistrate's lacks jurisdiction to hear and determine the succession matter. Having conceded as much, it was submitted that since the aforesaid succession cause before the lower court was filed in breach of Section 48 of the *Law of Succession Act*, the same must be deemed a nullity and as such, there is nothing that can be transferred to this Honourable Court. The 2nd Respondent thus prayed for the present application to be disallowed and the Applicants to bear the cost of the application.

Analysis

10. I have considered the Applicants' application dated 11th April, 2023 and the preliminary objection dated 17th April, 2023 that has been raised by the 2nd Respondent. I have also considered the respective submissions made by counsel on record on behalf of the Applicants and those made on behalf of the 2nd Respondent.
11. The main issue that arises for determination is whether this Court can order the transfer of Chuka Chief Magistrate's Court Succession Cause NO. 77B of 2020 to this Court for hearing and determination, and if so, whether it should so order.
12. It is not in dispute that the subject of the succession before the magistrate's court in Chuka Chief Magistrate's Court Succession Cause No. 77B of 2020 is the estate of the late M'Riria M'Irambu and the parties are in agreement the value of the said estate is over Kshs. 52,000,000/=. This value falls outside the pecuniary jurisdiction of the magistrate's court.
13. The Applicants have argued that the value of the estate may have appreciated since the filing of the matter in 2020 hence its current value that exceeds the pecuniary jurisdiction of the lower court in which it was filed. This argument in my view is farfetched. Given that the pecuniary jurisdiction of the Chief's Magistrate's Court is set at Kshs. 20 Million, it defeats reason that the estate could have over doubled its value within three years. In my view, the cause was filed in the lower court inadvertently or out of ignorance. Either way, the lower court did not have jurisdiction to deal with the matter from the very start.
14. When dealing with the issue of jurisdiction, J. B. Ojwang, J (as he then was) in the *Boniface Waweru Mbiyu v Mary Njeri & another* [2005] eKLR expressed himself as follows:

“Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court.”

I am persuaded by this holding. Jurisdiction is everything and a matter filed in a court without jurisdiction is a nullity and cannot be santised by transferring it. The court where a matter is filed without jurisdiction downs its tools. In such an eventuality, there will be nothing to transfer. The succession cause is a nullity.



15. I am in agreement with the above decision. A matter brought before a court that lacks jurisdiction is a nullity and the same can therefore not be cured by the procedure of transferring the matter to the proper forum that has jurisdiction to determine it. In as much as no prejudice is likely to be visited upon the Respondents if this application is allowed, the fact remains that the proceedings before the lower court were invalid ab initio and as such, there are no valid proceedings that are capable of being transferred to this Court.
16. In the circumstances, it is my view that the Preliminary Objection dated 17th April, 2023 is meritorious while the Application dated 11th April, 2023 lacks merits and should be dismissed with costs to the 2nd Respondent.

Conclusion:

1. The preliminary objection is sustained.
2. There is no valid petition or succession cause which can be transferred to this court.
3. The application dated 114/2023 is dismissed.
4. Costs to the 2nd respondent.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF JANUARY 2024.

L.W. GITARI

JUDGE

