



REPUBLIC OF KENYA



**In re Estate of Robert John Sumbi (Deceased) (Succession Cause E1564 of 2020)
[2024] KEHC 1748 (KLR) (Family) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
FAMILY**

SUCCESSION CAUSE E1564 OF 2020

HK CHEMITEI, J

FEBRUARY 22, 2024

IN THE MATTER OF THE ESTATE OF ROBERT JOHN SUMBI (DECEASED)

YVONNE TUNAI.....APPLICANT

VERSES

SUSSY KHAADI NANDAMA.....1ST RESPONDENT

NATALY NARANDO SUMBI.....2ND RESPONDENT

RULING

1. This ruling relates to the application dated 2nd June, 2023 and the preliminary objection dated 29th June, 2023.
2. The application dated 2nd June, 2023 was filed by the Applicant, Yvonne Tanui, and the preliminary objection dated 28th June, 2023 was filed by the Respondents Sussy Khaadi Nandama and Nataly Narano Sumbi.
3. The application dated 2nd June, 2023 seeks for orders that:
 - a. Spent.
 - b. The honorable Judge be pleased to make orders transferring this cause from Nairobi to Kakamega High Court Family Division for hearing and determination.
 - c. Costs be provided for.
4. The application is objected to vide the preliminary objection dated 29th June, 2023 on the grounds that the application:
 - a. Is res judicata.
 - b. Contravenes Section 80 of the *Civil Procedure Act* and order 45 of the *Civil Procedure Rules*.



- c. Is unmerited and pegged towards the scuttling and/ or delaying of the application for revocation of will and should be dismissed with costs.
5. The applicant and respondents have filed written submissions dated 17th July, 2023 and 20th July, 2023 respectively.
6. It's the applicants case that this matter ought to be transferred and be determined at Kakamega high court for the simple reason that the deceased hailed from that county and she has exhibited the chiefs letter acknowledging that fact.
7. The respondent's preliminary objection is to the effect that this court, Musyoka J and Mutuku J, separately directed that this matter ought to be heard and determined here in Nairobi. Consequently, the application is res judicata.

Analysis and Determination

8. I have carefully considered the application, preliminary objection as well as the written submissions filed by the parties and address them as follows:
9. The Applicant, in her written submissions, states, verbatim, that:
 - a. This honorable court has jurisdiction to transfer a matter before it to any other court in the best interest of justice.
 - b. There is no decision on record regarding where this cause should be heard, between Nairobi and Kakamega.
 - c. The cause of action arose within Kakamega County. A burial dispute was filed by the 1st Respondent in the Kakamega courts to have the deceased buried in his matrimonial home with the 1st Respondent in Kakamega County. The burial took place in Kakamega County. The deceased's 2nd matrimonial home is within Kakamega County.
10. The Respondent's in the written submissions refer to:
 - a. Court order given on 16th June, 2022 in Kakamega High Court Succession Cause No. E011 of 2021: Robert John Sumbi Versus Desterio W. Okumu where the court ordered, "that the case herein Kakamega HCSC No. 11 of 2022 be transferred to Nairobi High Court to be put together with Nairobi HCSC No. E1564 of 2022 for consolidation as the two causes relate to the estate of the same person."
 - b. There is a second court order attached which is not clear on the case citation and who the parties are. It also mentions transfer of a matter to Nairobi.

Determination

11. It is evident that the deceased's estate has different suits that have been consolidated in the current file being handled in Nairobi. There are also orders in the court's record showing that the matters have been transferred to Nairobi for consolidation and subsequent determination.
12. There is no evidence that any of the parties including the applicant has appealed against the decisions of the above honorable judges transferring the matters and consolidating them herein.
13. In *Mwangi Karanja v Alfred Ndiangui* [2011] eKLR where the Court stated, "It appears to me that transfer of suits from one court to another is essentially a procedural issue [Emphasis mine] that has been elevated to the status of jurisdiction. If a suit finds itself in the wrong court, surely it is in the



interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would any party suffer in that event? After all, the overriding objective of the *Civil Procedure Act* and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (section 1A (1)). The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions [Emphasis mine].”

14. In the premises I find that the preliminary objection is merited. The matter is res judicata and dealing with it will essentially mean that this court is sitting as an appellate court in the two decisions.
15. The application is otherwise dismissed with no order as to costs. Let the matter proceed to full trial.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 22ND DAY OF FEBRUARY 2024.

H K CHEMITEI

JUDGE

