



**Muchiri & 4 others v Muchiri (Miscellaneous Application
E013 of 2021) [2022] KEHC 10481 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS APPLICATION E013 OF 2021
FN MUCHEMI, J
JULY 27, 2022**

BETWEEN

**CHARLES GACHUGU MUCHIRI 1ST APPLICANT
GEORGE KARUGA MUCHIRI 2ND APPLICANT
SAMUEL NGECHU MUCHIRI 3RD APPLICANT
VIRGINIA WAHITO MACHARIA 4TH APPLICANT
MARY MURUGI KARARI 5TH APPLICANT**

AND

PETER KABAGI MUCHIRI RESPONDENT

RULING

Brief Facts

1. This application dated 23rd August 2021 is brought under Section 18(1) (b) (i) of the [Civil Procedure Act](#) and Rules 49, 63(1) and 73 of the [Probate and Administration Rules](#) seeks for orders that this Honourable Court be pleased to withdraw the succession proceedings in Othaya SRM Court in Succession Cause No. 99 of 2018 to this court for trial and final disposal.
2. In opposition to the application, the respondent has filed a Replying Affidavit dated 20th December 2021.
3. The applicants filed a Further Affidavit dated 27th January 2022.

The Applicants' case

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4. It is the applicants' case that the succession proceedings in Othaya SRMC Succession Cause No. 99 of 2018 was initially filed in Nyeri High Court Succession Cause No. 973 of 2015 by the respondent and Regina Wangui Muchiri now deceased and thereafter transferred to Othaya Courts for hearing and final disposal.
5. The applicants contend that the estate is comprised of the following whose value is estimated at over Kshs. 25 Million:-
 - a. L.R. No. Othaya/gura/306
 - b. L.R. No. Othaya/gura/532
 - c. L.R. No. Othaya/gura/533
 - d. Aguthi/gatitu/667/165
 - e. Othaya/kihuguru/1357
 - f. Othaya/kihuguruI/2134
 - g. Shares at Kiriko Farm Nakuru County 40.2 acres L.R. NO. 10375/14
 - h. Motor vehicle KBB 451D
 - i. Shares at various listed companies
6. The applicants contend that the shares between the beneficiaries ought to be settled at the earliest opportunity because the respondent has disposed of acres out of shares at Kiriko farm to third parties before final distribution by the court contrary to Section 45 of the *Law of Succession Act* and putting much of it to waste and further the respondent is unlawfully collecting rent at Othaya/kihuguru/2134 within Othaya town. As such, the applicants pray that the application be allowed.

The Respondent's Case

7. The respondent contends that he is the sole surviving administrator of the estate of the deceased. The respondent avers that the instant application is a non-starter, grossly incompetent, misconceived, scandalous, frivolous, vexatious and is only designed to occasion delay in the hearing and final disposal of Othaya Succession Cause No. 99 of 2018.
8. The respondent states that a grant of letters of Administration was issued to him and Regina Wangui Muchiri on 15th April 2016 vide High Court Nyeri Succession Cause No. 973 of 2015. By consent of all the beneficiaries, Nyeri Succession Cause No. 973 of 2015 was transferred to Othaya Magistrates Court for hearing and determination. The grant of letters of Administration was subsequently confirmed vide a Certificate of Confirmation of Grant dated 21st January 2019. The said certificate of confirmation of grant was later revoked vide a ruling delivered at Othaya court on 28th February 2020. The respondent avers that he has currently filed Summons seeking redistribution of the estate upon the demise of his co-administrator.
9. The respondent states that the applicants are not being candid with the court as they have at all times participated in Othaya Succession Cause No. 99 of 2018 and they have never raised the issue of jurisdiction. The applicants have only raised the issue as an afterthought aimed at scuttling or prolonging or delaying the hearing of the pending summons for revocation of grant and redistribution of the estate of the deceased herein. Furthermore, the applicants have not annexed any valuation reports to demonstrate that the value of the estate is in excess of Kshs. 25 Million.



10. The respondent avers that he had disposed of part of his entitlement in the Kiriko Farm and he had been allocated three acres as per the Certificate of Confirmation of Grant which has since been revoked, and accordingly he states that he did not intermeddle with the estate of the deceased.
11. The respondent further avers that motor vehicle registration No. KBB 451D and Title No. Othaya/kihugiru2134 do not form part of the free estate of the deceased.
12. The applicants filed a Further Affidavit dated 27th January 2022 denying that consent was not obtained from them for the Nyeri Succession Cause no. 973 of 2015 to be transferred to Othaya magistrates' courts. It is further contended that the applicants are opposed to the respondent's Summons for Revocation of grant and aver that they raised the issue of jurisdiction at the court in Othaya.
13. The applicants state that after conducting a valuation, the estate of the deceased is valued at Kshs. 85,600,000/- and they attached the Valuation report as proof. As such, they reiterate that the value of the estate exceeds the pecuniary jurisdiction of the subordinate court in Othaya.
14. The applicants aver that in the year 2017, the respondent disposed of unknown acreage in Kiriko Farm which had not been sub divided at the time of the transaction thus intermeddling with the deceased's estate.

The Applicants' Submissions

15. The applicants rely on Section 48(1) of the [Law of Succession Act](#) and Section 7(1) of the [Magistrates Courts Act](#) 2015 and submits that Othaya Law Courts is headed by a Principal Magistrate whose pecuniary jurisdiction is Kshs. 10 Million yet the value of the instant estate is over Kshs. 85,600,000/-. As such, the court in Othaya has no jurisdiction. The applicants cite the cases of [Samuel Kamau Macharia & Another vs KCB & 2 others](#) SC Civil Application No. 2 of 2011; [Owners of Motor Vessel "Lilian S. vs Caltex Oil \(Kenya\) Ltd](#) (1989) KLR and [Abraham Lenauaia Lenkeu vs Charles Katekeyo Nkaru](#) (2016) eKLR to support their contentions. The applicants further submit that pursuant to Section 18(1)(b) of the [Civil Procedure Act](#), this court has the power to transfer all suits.
16. The applicants submit that the cause was transferred from Nyeri High Court to the Principal Magistrate court suo moto and as such, it is only this court that can recall back the cause for its final disposal. As such, the applicants pray that the application is well founded and ought to be allowed.

The Respondent's Submissions

17. The respondent relies on Section 23 of the Magistrates Court Act which repealed Section 48 of the [Law of Succession Act](#) and submits that the magistrates' courts have jurisdiction to determine probate and administration disputes. The respondent further submits that since the succession cause arose from the Nyeri High Court and was later transferred to the Othaya Magistrates Court, the court has now become functus officio.
18. The respondent avers that the subject value of the estate was declared as Kshs. 600,000/- at the time of filing the petition before the High Court. The matter was transferred to Othaya Court upon the enactment of the [Magistrates Court Act](#) of 2015. As such, the magistrates court has jurisdiction to determine the matter. Moreover, most of the deceased's property is situate in Othaya and thus the magistrates court in Othaya is equipped with the territorial jurisdiction to determine the matter.
19. The respondent urges the court to take judicial notice of the fact that the value of land in the country has been escalating at a very high rate. However, that notwithstanding, the value which guides the court is the value in the pleadings as at the date of filing the cause which was Kshs. 600,000/-. Moreover, the



applicants have not tendered any evidence to show that this was not the value of the estate in the year 2015. The respondent thus submits that the appreciation in value of the estate over 6 years ago does not take away the jurisdiction of the court and it would be unjust for him to be driven of the jurisdiction of the court simply because the value of the estate has subsequently increased.

20. The respondent further submits that the decision to transfer the matter to Othaya courts was neither contested, reviewed nor appealed against by the applicants who were participants in Nyeri High Court Succession Cause No. 973 of 2015. The respondent contends that the applicants agreed to the magistrates' courts' jurisdiction and continued to actively participate in the proceedings without raising the issue of jurisdiction. Thus, it is clear that the applicants' only motive is aimed at scuttling, prolonging and/or delaying the hearing of the summons for revocation of grant and redistribution of the estate. To support his contention, the respondent relies on the case of *Agnes Mutitu Mwaura & 2 Others vs Jane Njoki Gachoki* (2015) eKLR., In support of his submissions the respondent relies on the cases of *Alice Siagani Dipondo vs Andrew Darkey Dipondo* [2021] eKLR and *Joseph Muulu Mbai & 2 Others vs Muoka Matheka & Another* [2021] eKLR.

Issue for determination

21. The main issue for determination is whether the application has merit.

The Law

Whether the application has merit.

22. It is not in dispute that the succession proceedings being referred to in the instant application were instituted in the High Court in Nyeri in Succession Cause No. 973 of 2015 whereby letters of administration were granted to the respondent and one Regina Wangui Muchiri.
23. Both parties confirm that the file was transferred to the magistrates court in Othaya. The parties however differ on why the file was transferred. The applicants claim that the file was transferred by the court suo moto whereas the respondent claim that the file was transferred with the consent of the parties. During the pendency of this ruling, this court called for the original file Othaya P&A Cause No. 99 of 2018. On perusal of the file, it appears that the High court transferred this case suo moto to Othaya. None of the parties was involved when the orders of 05/2/2018 were made transferring the cause. The orders are referred to in the Deputy Registrar's letter dated 13/02/2018.
24. The issue of lack of jurisdiction was raised in Othaya court by the counsels on record on two occasions but no formal application was filed for the court determine the issue of jurisdiction interparties. On 10/09/2021, Mr. Nganga for applicants informed the court that he had already filed the application for transfer in the High court.
25. The law on transfer of cases is prescribed under Section 18 of the *Civil Procedure Act*. The provision empowers the High Court to withdraw and transfer cases instituted in the subordinate court. The court may be moved by either party or the court may do it on its own motion. Any suit pending before the Magistrates' Court may be transferred for various reasons even if the court in question is competent to determine it.
26. In regard to this case, the applicant challenges the pecuniary jurisdiction of the Magistrate court to hear and determine the cause. Section 48 of the *Law of Succession Act* was amended to give Magistrates powers to hear and determine succession causes.

Section 48(1) provides :-



Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application 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 the pecuniary limit prescribed under section 7(1) of the Magistrates' Courts Act,

27. It is clear from the said section that the jurisdiction of magistrates is pegged to their pecuniary jurisdiction under Section 10 of the Magistrates Court Act whereas the highest is that of the Chief magistrate at Kshs.20,000,000/=. The pecuniary jurisdiction of a principal magistrate who is the highest in Othaya is Kshs.10,000,000/=. The valuation report indicates that the value of the assets of the deceased is Kshs.85,000,000/=. The cause was filed in 2018 and the total value was indicated as Kshs.600,000/=. The valuation report was not challenged because the respondent did not file his own report from a professional valuer after he was served. From the filing of the cause in 2018, the value of the estate cannot have appreciated from Kshs.600,000/= to Kshs. 85 million. The only possible thing that may have happened is that the value of the estate must have been greatly undervalued at the time of filing the cause. The estate consists of several properties referred to as:-
- a. L.R. No. Othaya/gura/306
 - b. L.R. No. Othaya/gura/532
 - c. L.R. No. Othaya/gura/533
 - d. Aguthi/gatitu/667/165
 - e. Othaya/kihugiru/1357
 - f. Othaya/kihuguri/2134
 - g. Shares at Kiriko Farm Nakuru County 40.2 acres L.R. NO. 10375/14
 - h. Motor vehicle KBB 451D
 - i. Shares at various listed companies
28. Jurisdiction can only be granted by the law and without jurisdiction, the outcome of this cause may be open to challenge in a court of law.
29. Taking into consideration the valuation report, I am of the considered view that the Principal Magistrate Othaya lacks the jurisdiction to entertain the said cause.
30. It is my finding that this application has merit and it is hereby allowed in the following terms.
- i. That Othaya PM Succession Cause No. 99 of 2018 be transferred to the High court Nyeri for disposal
 - ii. That each party meet their own costs of this application.

DELIVERED, DATED AND SIGNED AT NYERI THIS 27TH DAY OF JULY, 2022.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 27th day of July, 2022

