



In re Estate of Esther Akworo Ogutu (Deceased) (Miscellaneous Succession Cause E091 of 2024) [2024] KEHC 14768 (KLR) (25 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14768 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE E091 OF 2024
RE ABURILI, J
NOVEMBER 25, 2024
IN THE MATTER OF THE ESTATE OF ESTHER AKWORO OGUTU (DECEASED
BETWEEN
SUSAN CAROLEAN OGUTU PETITIONER
AND
IRENE ACHIENG OBJECTOR
(Arising from Kisumu Chief Magistrate Succession Cause No. 37 of 2017)

RULING

1. Parties are absent. On the court’s own motion, and pursuant to the provisions of Sections 48 and 49 of the *Magistrates’ Courts Act* and Section 23 of the *Law of Succession Act*, and on the Authority of *Consolata Ochieng Ogutu & 3 others v Adet Odongo & another* [2021] eKLR, I find that this court has no jurisdiction to revoke the grant issued by the Magistrate’s court, other than on appeal or where the supervisory jurisdiction of this Court is invoked.
2. The Magistrate’s court, by dint of Sections 48 and 49 of the Magistrate’s Courts Act and Section 23 of the *Law of Succession Act*, has jurisdiction to hear and determine summons for revocation of grants issued by the Magistrates courts.
3. To guide the parties hereto, I shall reproduce the holding in the above case here where this Court stated as follows on a similar application:
 - “ 12. The law on revocation of grants, made by a magistrate’s court, changed in 2015, to give jurisdiction to magistrates’ courts to revoke grants that they have power to make. The *Magistrates’ Courts Act*, No 26 of 2015, which commenced on 2nd January 2016 amended the provisions of the *Law of Succession Act*, Cap 160, Laws of Kenya, which provided for jurisdiction of the



Magistrates Courts in probate matters, that is to say sections 48 and 49. The changes were effected through sections 23 and 24 of the Magistrates Courts Act.

13. The amendments provide as follows:

“23. The *Law of Succession Act* is amended, by repealing section 48(1) and substituting therefor the following new subsection –

“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, 2015.”

24. Section 49 of the *Law of Succession Act* is amended –

- a) by deleting the words “Resident Magistrate” and substituting therefor the words “Magistrate’s Court”; and
- b) by deleting the words “one hundred thousand shillings” and substituting therefor the words “the pecuniary limits set out in section 7(1) of the Magistrates Courts Act, 2015.”

14. To place the amendments in proper perspective, it would be necessary to cite the provision in the old section 48(1) of the *Law of Succession Act* that was amended by Act No 26 of 2015. The old section 48(1) read as follows:

“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:

Provided that for the purpose of this section in any place where both the High Court and a resident magistrate’s court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act ...”



15. The effects of the amendments was that the pecuniary jurisdiction of the Magistrate’s Court was enhanced from Kshs 100, 000.00 to a maximum of Kshs 20, 000, 000.00. Secondly, where the High Court and the Magistrate’s court are situated within the same station, the High Court shall no longer enjoy exclusive jurisdiction, for it shall share jurisdiction in succession causes with the magistrate’s court, subject, of course, to the pecuniary ceilings and gazettelement by the Chief Justice. Finally, the exclusive jurisdiction of the High Court to determine revocation of grants applications, under section 76, was taken away, and the same was extended to the Magistrate’s Court, with respect to grants of representation that such Magistrate’s Court would have power to make.
 16. Accordingly, under Act No 26 of 2015, by virtue of the amendment of section 48(1) of the *Law of Succession Act*, a Magistrate’s Court now has power to revoke a grant of representation that it has power to make. There is now no need for one who wishes to have a grant made by a Magistrate’s Court revoked, to move the High Court to do so. All that that person needs to do is to file a summons for revocation of grant within the cause in which the grant was made by the Magistrate’s Court.
 17. Act No 26 of 2015 commenced on 2nd January 2016, and, therefore, the amendment of section 48(1) of the *Law of Succession Act* became effective from that date. The summons for revocation of grant herein were dated 14th August 2019 and filed on the same day, that is, after Act No 26 of 2015 had commenced and the amendment to section 48(1) of the *Law of Succession Act* had become effective. There was no need for the respondents herein, in the circumstances, to have initiated a fresh cause for revocation of the grant made in Ukwala SRMCSC No 228 of 2018, at the High Court. They were thus well within the law to file the summons for revocation of grant in Ukwala SRMCSC No 228 of 2018, since, as I have stated herein, the Magistrate’s Court had, by then, been clothed with jurisdiction to revoke the grant made in Ukwala SRMCSC No 228 of 2018. Accordingly, the ground of appeal on jurisdiction of Magistrate’s Court to revoke grants is hereby found to be devoid of merit and is dismissed.”
4. Accordingly, the summons for revocation of grant dated 13th November 2024 is hereby struck out for want of jurisdiction with no orders as to costs and the original Kisumu Chief Magistrate P&A No 37 of 2017 is hereby returned to the Chief Magistrate’s court at Kisumu.
 5. The Applicant is at liberty to file the summons for revocation of grant at Kisumu Chief Magistrate’s Court.
 6. I make no orders as to costs of the struck-out summons.
 7. This file is closed.
 8. This Ruling to be typed in full.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

