



In re Estate of the Late Chemisto Sawe Suter (Miscellaneous Succession Cause E005 of 2021) [2024] KEHC 16334 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE E005 OF 2021
JRA WANANDA, J
DECEMBER 20, 2024
IN THE MATTER OF THE ESTATE OF THE LATE CHEMISTO SAWE SUTER
IN THE MATTER OF
JANE JEPKOSGEI CHEPKIYENG APPLICANT**

RULING

1. As was stated in the case *The Owners of Motor Vessel "Lilian S" vs. Caltex Oil (K) Ltd* [1989] KLR 1, it would be an act in vain for a Court to hear and determine a matter if it lacks the jurisdiction to do so. In the said case, the Court of Appeal guided as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

2. Similarly, in *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, the Supreme Court held as follows:

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings Where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by *the Constitution*. Where



the Constitution confers power on Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

3. Coming back to this matter, the Application before Court for determination is the Summons dated 1/03/2021 and filed on 10/03/2021 through Messrs Ledisha J.K. Kitttony & Co. Advocates. It seeks prayers as follows:
 - i. The Grant of Letters of Administration made to Jackson Kimutai Suter on the 6th October 2017 by the Eld CMCC No. P/A 226 of 2017 be revoked and/or annulled.
 - ii. The costs of this Application be provided for.
4. The Application is expressed to be brought under Rule 44 of the Probate and Administration Rules and is premised on the grounds stated on the face thereof. It is then supported by the Affidavit sworn by the Applicant, Jane Jepkosgei Chepkiyeng.
5. In the Affidavit, the Applicant deponed that she is the daughter-in-law of the deceased, Chemisto Sawe Suter, by virtue of her marriage to the late Wilson Cheruiyot Chemisto, one of the sons of the deceased. She deponed that a Grant of Letters of Administration over the estate of the deceased was made to the Petitioner-Administrator herein, Jackson Kimutai Suter, on 6/10/2017 and confirmed on 29/05/2018 and that the same was obtained by making of false statement and/or concealment of material facts from the Court. She urged that the Petitioner misrepresented to the Court that the deceased was survived by only one son and thus excluding the Applicant's husband, that she came to learn that the Petitioner had obtained the Grant when she was served with the Application for Confirmation of the Grant. She deponed further that she never executed any consent to authorize the Petition and that the Petitioner has fraudulently proceeded to dispose of the parcel of land known as Irong Korkitony/85 owned by the deceased, to a stranger, in total disregard to the Applicant's husband's share.
6. As it will be noted above, the Application does not, on the face of it, disclose the identity of the Respondent. However, from the grounds thereof and the contents of the said Affidavit, it is clear that the said Chemisto Sawe Suter, referred to as the Petitioner-Administrator, is the person targeted herein. For this reason, I will refer to the said Chemisto Sawe Suter as the Respondent.
7. When the Respondent was served, through Messrs Bundotich Korir & Co., he filed a Notice of Preliminary Objection dated 7/07/2021. The basis of the Objection was stated to be simply that the Application is incompetent, incurably defective and defective, among other similarly ambiguous and generalized descriptions. The Respondent then also failed to file Submissions when directed to do so. Under these circumstances, the Court was left with no material to discern or unravel the nature of the Preliminary Objection preferred by the Applicant, and on this ground, vide my Ruling dated 12/04/2024, I dismissed the Preliminary Objection and directed that the substantive Application be set down for hearing.
8. I note that subsequently, the Applicant filed the Application dated 30/04/2024 seeking leave to introduce further documents said to have been inadvertently omitted in her initial Affidavit. I notice further that the Application was placed before the duty Judge, my brother Nyakundi J, on 8/05/2024, and who granted the same as prayed.
9. On the part of the Respondent, since I have still not come across any Replying Affidavit from him in opposition to the Application, I presume that he filed none.



Hearing of the Application

10. It was then agreed that the Application be canvassed by way of written Submissions. The Applicant filed her Submissions on 19/07/2024 while the Respondent filed on 20/07/2024.

Applicant's Submissions

11. In her Submissions, Counsel for the Applicant urged that the Applicant has, in her Affidavit, exhibited documents demonstrating that her late husband is a brother to the Respondent (including a letter from the Chief), the altercations she has had with the Respondent over other parcels of land hence the reasons for the Respondent's action of disinheriting the Applicant and that the Respondent has maliciously and fraudulently purported to dispose of the property known as Irong/Korkitony/85. She submitted that the Applicant's late husband also left behind a daughter. In regard to revocation of the Grant, she cited Section 76 of the *Law of Succession Act* and several authorities. Counsel then recounted the matters already set out in the Applicant's Affidavits and which, for this reason, I will not again recite.

Respondent's Submissions

12. In his Submissions, Counsel for the Respondent submitted that before delving into the merits of the Application, the Court has to be satisfied whether the Application is competent and whether the Court is seized with jurisdiction to grant the orders sought. He cited the case of *The Owners of Motor Vessel "S"* (supra). He also submitted that the issue of jurisdiction can be raised at any stage of the proceedings and for this, he cited the case of *Ali Oshan v Mrs Catherine Kaswii Nyiha and Others*, Misc. Civil Application No. 525 of 2022. He then cited Section 48(1) of the Magistrate's Court Act which, he submitted, was amended by the enactment of the Magistrate's Court *Act, No. 26 of 2015* and urged that Section 23 of the new Act repealed the said Section 48(1) and substituted it with a new sub-Section which accorded jurisdiction to Magistrates to deal with Applications under Section 76 of the *Law of Succession Act* for revocation or annulment of Grants. He cited various authorities.
13. According to Counsel therefore, the Applicant has not properly approached the Court as the orders sought are substantive in nature and cannot be granted through a Miscellaneous Application and that as such, the Court lacks jurisdiction to entertain the Application. According to him, the Applicant ought to have either applied for Review or for setting aside of the Magistrate's orders by applying for the same before the same Magistrate who granted the orders. He cited Article 165(3)(c) and (e) on the jurisdiction of the High Court and submitted that where there is a clear procedure for redress for any particular grievance prescribed, that procedure should strictly be followed. He again cited several authorities.

Determination

14. The Grant of Letters of Administration and the Certificate of Confirmation of Grant that this High Court is being asked to revoke or annul were issued by the Magistrates in the year 2017 and 2018, respectively. In opposing the Application, the Respondent has taken the position that the Application is improperly before this Court by reason that it is the same Magistrate's Court that issued the Grant and confirmed it that retains the jurisdiction to revoke or annul it. On her part, the Applicant legal team, in its wisdom, chose to totally steer clear of responding to this challenge.



15. On the issue of the High Court being asked to revoke a Grant issued by the Magistrate’s Court, I cite the following statements made by W. Musyoka J in the case of *Re Estate of Charles Boi (Deceased)* [2020] eKLR

“2. Let me start by stating that this cause ought not to have been initiated or brought at the High Court. I say so because 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. I am talking about the *Magistrates’ Courts Act*, No. 26 of 2015, which commenced on 2nd January 2016. The said statute amended the provisions of the *Law of Succession Act*, Cap 160, Laws of Kenya, which provide for jurisdiction of 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*.

3. The amendments stated 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.”

4. 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 ...”

5. The first effect, 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 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.
6. This ruling is concerned with jurisdiction to revoke grants made by the magistrate's court. 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 a person who wishes to have a grant made by a magistrate's court revoked, to move the High Court. All what 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.
7. [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, dated 3rd September 2018, was filed in this cause on 4th September 2018, that is after [Act No. 26 of 2015](#) had commenced and the amendment of section 48(1) of the [Law of Succession Act](#) had become effective. There was no need for the applicant, in the circumstances, to have initiated a fresh cause, for revocation of the grant made in Hamisi SRMCSC No. 29 of 2016, at the High Court. She should have simply filed the summons for revocation of grant in Hamisi SRMCSC No. 29 of 2016, since the magistrate's court had, by then, been conferred with jurisdiction to revoke the grant made in Hamisi SRMCSC No. 29 of 2016.
8. The taking away of jurisdiction from the High Court, with respect to revocation of grants, made by the magistrate's court, would mean that the High Court no longer has original jurisdiction to address that issue, and that its jurisdiction, over the issue, would be as an appellate court, from a ruling of the magistrate's court, on a summons for revocation of the grant issued by that court. I have no jurisdiction, therefore, sitting as a High Court, to entertain a summons for revocation of grant, where the applicant has not filed such application at the magistrate's court in the first instance, since the [Law of Succession Act](#), as currently framed, does not vest me with such jurisdiction. Secondly, the issue of revocation of the grant made by the magistrate's court has not been placed before me in invocation of my appellate jurisdiction.”



16. Similarly, Mrima J in the case of *Turfena Anyango Owuor & another v Mary Akinyi Dengo* [2018] eKLR, stated as follows:

“ 6. Turning to the issue of the jurisdiction of the magistrates in succession matters, I believe the law as amended is so clear and settled. Initially the jurisdiction of the magistrates in succession matters was provided by Section 48(1) of the *Law of Succession Act*, Cap. 160 of the Laws of Kenya (hereinafter referred to as ‘the Act’). The said provision stated as follows: -

‘Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49 of this Act, a Resident Magistrate shall have jurisdiction to entertain any application other than an application under section 76 of this Act 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.’ (emphasis added).

7. In 2015 Section 48(1) of the Act was amended by the enactment of the Magistrates’ Court Act, *Act No. 26 of 2015* (hereinafter referred to as ‘the new Act’). Section 23 of the new Act repealed the said Section 48(1) of the Act and substituted it with the following new subsection: -

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

1. 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.’ (emphasis added).

8. The effect of the aforesaid amendment was to accord jurisdiction to the magistrates to deal with applications under Section 76 of the Act which are for revocation or annulment of the grants issued by the magistrates’ courts. I therefore hold that a Magistrates’ Court has jurisdiction to deal with an application for revocation or annulment of a grant it issued subject to the pecuniary jurisdiction of that court. Since the value of the estate in Form P &



A 5 was disclosed as Kshs. 200,000/= the application must be determined by the lower court.”

17. I fully share and associate myself with the above sentiments which have also been reiterated in numerous other authorities from the High Court. The instant Application seeks the revocation or annulment of a Grant of Letters of Administration issued by the Magistrate’s Court on 6/10/2017 and confirmed on 29/05/2018, long after the said amendments on jurisdiction of Magistrate’s Courts had already come into force in the year 2016. I therefore agree with the Respondent that the Application is improperly before this Court since Magistrate’s Courts now possess the jurisdiction to revoke or annul Grants issued by themselves. On this issue, the High Court would only retain Appellate jurisdiction.

Final Orders

18. The upshot of my above findings is that I rule and orders as follows:
- i. The Summons for Revocation/Annulment of Grant, dated 1/03/2021, and by extension, this entire Miscellaneous Cause is hereby struck out.
 - ii. As the Respondent did not challenge the Application on merits, each party shall bear his/her own costs of the Application.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF DECEMBER 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Ms. Kipseii for the Applicant

Mr. Korir for the Respondent

Court Assistant: Brian Kimathi

