



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 95 OF 2015

IN THE MATTER OF THE ESTATE OF LEPISH OLE LORGILA

ESTHER N. LEPISH & 20 OTHERS.....OBJECTORS

MOSONIK OLE LEPISH & ANOTHER.....ADMINISTRATORS

ANNE WANJIKU & 107 OTHERS.....INTERESTED PARTIES

RULING

M/S Sinyok Lepish and eight other applicants brought this suit against Musonik Ole Lepish and Kevin Koitalel Lepish as administrators to the Estate of the deceased seeking the following orders

(a) That the grant of letters of administration made by the Senior Resident Magistrate court Kajiado in Succession Cause No. 14 of 2007 on 28th August, 2007 be and is hereby revoked for lack of jurisdiction to entertain the Succession cause in respect of an Estate value exceeding Ksh I billion.

In support of the application are replying affidavits by the applicants setting out the grounds why this court should grant the orders. The respondents filed replying affidavits where they denied all the allegations. They contended that all procedural requirements were followed to obtain the letters of grant of administration. I have considered the affidavit evidence in the matter.

This matter is to be determined on the issue whether the Senior Resident Magistrate Court had the jurisdiction to issue the grant on 28th August, 2007 whose value was about one billion.

Section 48(1) of the law of Succession provides as follows:

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of Section 49 of the Law of Succession Act, Magistrates 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 decree and make such orders therein as may be expedient in respect of the Estate. The gross value as may be expedient in respect of any estate the gross value of which does not exceed Kshs. One hundred thousand shillings.

Subject matter jurisdiction refers to a courts power to hear and determine the case. The primary source of a jurisdiction of a court is the constitution 2010 pursuant to Article 162 (1), (2), (3) and (4) of the same constitution.

Parliament enacted the magistrate's court Act No. 10 now repealed to affirm grant of jurisdiction to subordinate courts. As courts of limited jurisdiction subject matter jurisdiction under the law of succession Act was limited to a pecuniary value of the Estate to a maximum of 100,000 at the time the cause was heard and grant issued.

As courts with limited jurisdiction any decision made without jurisdiction is therefore unconstitutional. I therefore agree with Mr. Agina learned counsel for the objector that a judgement made without jurisdiction by a court purporting to exercise jurisdiction within subject matter jurisdiction is void abinitio. Notwithstanding anything to the contrary contained in the magistrate Court Act enhancing pecuniary jurisdiction to various cadres of magistrates presiding over subordinate courts, there was no such extension conferred upon them under the Succession Act. The provisions of Section 48 and 49 of Cap. 160 remained restrictive as to the nature and subject matter jurisdiction magistrate's court could exercise in any cause. The law in force all the time governing jurisdiction on succession cases was based within Section 48 and 49 of the Act.

The above stated position of the law is fortified by the decisions of the superior court. In the case of *Samwel Kamau Macharia & another v.*

Kenya Commercial Bank Ltd and 2 others 2012 EKLK. It was held:

“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 upon it 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”

Section 76 of the law of succession provides that the grant of letters of administration provides that letters of grant may be revoked if obtained and are defective in substance, the grant was obtained fraudulently by making a false suggestion, concealing from court something material to the case, the grant was obtained by means of an untrue allegations of fact essential in a part of law, the applicant has executed an inventory which is untrue in material respect.

It is not in dispute from the affidavit evidence by the objector that the respondents concealed and gave false information on the value of the Estate of the deceased by under valuing it to be within the Kshs,100,000 pecuniary limit. This was the value which enabled the Senior Resident Magistrate to assume jurisdiction and adjudicate over the cause. The applicant has clearly set out that the nature and substance of the Estate pending before court is worthy over one billion. The operative provision of Section 48 as read with Section 49 of the law of succession Act could not have allowed the Resident Magistrate to assume or consent to such jurisdiction.

By the Resident Magistrate assuming jurisdiction which the law does not provide as stated in the application rendered the grant *void abinitio* for want of jurisdiction. On that issue alone there is a just cause to revoke the letters of grant of administration issued to the respondents on 28th August, 2007.

I therefore allow for annulment and revocation as prayed for in the notice of motion dated 2nd September, 2014 and do make the following orders:

- (1) An order revoking and annulment the letters of administration to the Estate of Lepish ole Lorgila granted to the respondents dated 28th July, 2007**
- (2) A citation against the respondents ordering them to surrender and deliver the grant to the Deputy Registrar of the High Court on or before 20th August, 2018**
- (3) An order that the respondents do prepare and file a true account or inventory of all the Estates of the deceased since obtaining letters of grant in 2007.**
- (4) The respondents are hereby restrained in dealing with the Estate of the deceased until final determination of the succession cause by this court.**
- (5) That the three households do nominate from each house a representative to be appointed as co-administrator to the Estate of the deceased taking into account the hierarchy under the law of Succession Act.**
- (6) That the respondents so identified and named do petition for grant of letters denovo in respect of the Estate of the deceased.**
- (7) That a restriction be entered at the Land Registry against all titles, subdivisions arising from LR Kajiado/Kitengela 330/329.**
- (8) That this matter be mentioned on 17th September, 2018 before me for further directions.**
- (9) Costs of this application in the cause.**

Dated and delivered in open court at Kajiado this 30th day of July, 2018.

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R. NYAKUNDI

JUDGE

In the presence of Mr. Ochako for the respondent

Mr. Nzaku for the for the interested parties

In absence of Mr. Agina for the applicant.

Court Clerk Mateli.