



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 477 OF 2014

In the matter of the estate of YOHANA AJESA..... (Deceased)

EDWIN KIDUDI KHASI.....APPLICANT

VERSUS

THOMAS LUMEZANI ACHESA.....RESPONDENT

JUDGMENT

1. By the Summons dated 16/06/2014 brought pursuant to **Section 48** and **73** of the Law of Succession Act, Rules 44(1) and 73 of the Probate and Administration Rules the applicant seeks the revocation and/or annulment of grant of probate or letters of administration issued to the Respondent on 11/12/2013 and any other orders made pursuant thereto in respect to the registration and/or transfer of **L.R.No. KAKAMEGA/SHAMAKHOKHO/314** (herein after referred to as the suit property). He also prays that the title to the suit property do revert to the deceased pending proper probate and administration proceedings in respect thereof together with costs.
2. The application is based on the grounds that the proceedings that led to the issuance of the said letters (being Hamisi SPM Succession Cause No. 38 of 2008) were commenced without the Respondent making a disclosure of all due liabilities known to him and against the estate, that the applicant is a bona fide purchaser of a portion of the suit property measuring 54.6 meters by 120.6 meters which comprised the deceased's estate. He also claims that this fact was deliberately ignored by the Respondent whose intentions were to inherit the whole of the deceased estate under dubious circumstances. He claims that the suit land measured 0.90 Hectares (2.25 acres) or thereabout and clearly of a value exceeding Kshs.100,000/= the statutory jurisdiction of the Hamisi Senior Principal Magistrate's Court. The applicant thus contends that the said proceedings were defective in substance and in law. He also says that the said grant was obtained fraudulently by deliberately making of a false statement and by concealing information material to the case. It is further claimed that the Respondent has taken advantage of the irregularly issued letters of administration and has made himself the administrator of the deceased's estate as a sole beneficiary. That it is just and fair that the orders sought be granted. The summons is also supported by the Applicant's annexed affidavit sworn on the 16/06/2014 wherein he reiterates the grounds as summarized above.
3. In opposing the application the Respondent swore a replying affidavit on 2/07/2014 wherein he admits that he obtained a grant of letters of administration intestate from the Hamisi Law Courts in respect of the deceased herein who was his father. He denies ever having a transaction with the Objector herein disposing part of the deceased's estate. He claims that the objector has forcefully and unlawfully occupied the deceased's estate, and has refused to co-operate with the local administration to have the matter resolved. He claims that the objector has taken advantage of the fact that he (Respondent) is in Nairobi most of the time and as such the objector has sneaked into

- the deceased estate which has compelled him (respondent) to move the land court to have him evicted as per the annexures marked “TLA 1” and “TLA2”.
4. He further depones that it would be prudent to have this cause stayed so as to give the land court an opportunity to determine if the objector legally acquired the estate.
 5. Parties canvassed this application by filing and exchanging written submissions together with the authorities they intended to rely on.
 6. From an analysis of the submissions, the issues for determination are as follows:
 1. Whether the Senior Principal Magistrates Court at Hamisi had Jurisdiction to issue letters of grant of administration to the Respondent.
 2. Whether the applicants have satisfied the conditions precedent to warrant revocation/annulment of the letters so granted to the Respondent.
 7. With regard to the first issue, it is trite law that jurisdiction is paramount in all court proceedings, so that where a court has no jurisdiction the decision it makes thereof becomes null and void and will have no effect whatsoever. As aptly put by the learned judges in the case of **Owners of the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd (1989)KLR 1** on jurisdiction **“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 continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction”**.
 8. It has been submitted by the applicant that the Senior Principal Magistrates Court Hamisi Law Courts had no jurisdiction to issue the grant aforesaid because as provided under **Section 48** of the Law of Succession Act (the Act) subordinate courts can only deal in land whose value is less than Kshs.100,000/=. The applicant in the instant case claims that the value of the suit property herein was more than the Kshs.100,000/= shown on the P & A5 Form although both the applicant and the respondent failed to produce any form of valuation report as evidence for the court to rely on and make a finding on the actual value of the suit land herein. However, the documents on the file, which have not been disputed show that part of the 0.9 Ha. Parcel of land was sold for KShs.175,000/= on 10/02/2009. Whether the sale was genuine or not is a matter for the Environment and Land Court. This being my finding I am satisfied that the subordinate court at Hamisi did not have the pecuniary jurisdiction to hear and determine the issue that was before it then, namely issuing Grant of Letters of Administration and proceeding to confirm the same. All the work done by the said court in relation to the deceased’s estate when the court had no jurisdiction to do so was null and void and of no consequence.
 9. Regarding the second issue, I have carefully considered the contending submissions on the same and have particularly noted the submissions by the Respondent who says that the applicant’s claim falls squarely in the ambit of the Land and Environment Court. I note from the respondent’s submissions that the respondent does not deny the sale agreement between the applicant and himself. All he says is that the applicant is not a creditor to the deceased’s estate. He also contends that even if the agreement were found to be genuine, what the parties did amounts to intermeddling with the deceased’s estate. I do not agree with this line of reasoning.
 10. What appears clear to me is that though the respondent knew that the deceased died on 14/07/1985 the agreement was made on 10/02/2007, so that by the time the respondent filed for the grant on 30/07/2013, it was well within his knowledge that the applicant was already in occupation of part of the deceased’s estate. The applicant did not reveal this fact to the court when he filled out the P & A forms.
 11. Under section 76(b) of the *Law of Succession Act*, the court may on application or on its own motion revoke a grant of representation on the ground that, **“the grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the case.”** *The Respondent herein concealed the fact that a portion of the suit land had been sold to the applicant herein. For this reason and for the reasons that the subordinate court had no jurisdiction to deal with the succession proceedings before it I find the summons herein to be meritorious. I accordingly allow the same in terms of prayers 1 and 2 thereof.*
 12. *Consequently, I declare the grant issued to the respondent by the Senior Principal Magistrate’s Court at Hamisi in Succession Cause number 38 of 2013 to be null and void and of no*

consequence.
13. *Each of the parties in this cause shall bear their own costs.*

Judgment delivered, dated and signed in open court at Kakamega this 12th day of March 2015

RUTH N. SITATI

JUDGE

In the presence of

Mr. Osango for Kundu for Petitioner/Respondent

Mr. Shifwoka for Objector/Applicant

Mr. Juma Court Assistant