

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO. 2042 OF 2011

IN THE MATTER OF THE ESTATE OF ISAAC KAMAU NDOGE (DECEASED)

RULING

1. The primary cause in this matter was commenced at the Thika Chief Magistrate's court, being Thika CMCS No. 219 of 2010. A grant of letters of administration intestate was made by that court on 21st January 2011. The proceedings before this court were commenced, not by way of petition, but summons for revocation of the grant made by the Thika court.
2. The revocation application was dated 15th September 2011. The said application was disposed of by consent on 7th November 2011, when it was allowed and the grant made on 21st January 2011 and confirmed on 8th June 2011 revoked and set aside. It was ordered that a fresh grant do issue accordingly to Nathaniel Njoroge Kamau and Ruth Wambui Kamau.
3. Following the disposal of the revocation application dated 15th September 2011 this court because *functus officio*. The primary cause is at Thika court before the Chief Magistrate. It is there that a petition for grant of letters of administration intestate was filed. No petition was filed here, at the Nairobi High Court probate and administration registry, for grant of representation. The cause before me is miscellaneous. It was commenced for only one purpose, the revocation of the grant issued by the Thika court. There was no other purpose. Once that purpose was accomplished on 7th November 2011 the cause was exhausted. No other process ought to have been initiated in this cause thereafter. The filing of the current miscellaneous application for the revocation of the grant made by the Thika court did not amount to a takeover of the Thika cause by the High Court. The Thika cause is still alive, but the High Court one is spent. All the outstanding processes ought to be finalized in the Thika cause.
4. The legal foundation for this is sections 47 and 48 of the Law of Succession Act. Section 47 of the Act confers jurisdiction on the High Court for the purpose of the implementation of the provisions of that Act. This means that the reference to the court in the Act means the High Court. There is a proviso though to section 47, which gives power to the Chief Justice to extend the jurisdiction conferred on the High Court to resident magistrates to represent the High Court in stations where there is no High Court.
5. Section 48 of the Law of Succession Act sets out the jurisdiction of the resident magistrate's court appointed by the Chief Justice under section 47 of the Act. The resident magistrate's court so appointed has the same powers as the High Court, save that it can only exercise jurisdiction over estates whose value does not exceed Kshs. 100, 000.00 and it cannot revoke grants that it has made. The power to revoke a grant made by a resident magistrate is vested in the High Court by section 48 of the Law of Succession Act.
6. Where the High Court is approached to revoke a grant in exercise of the jurisdiction conferred by section 48 of the Act, its mandate would be limited to the single matter of revoking the grant. This is so given that it is the resident magistrate's court which made the grant which is seized of the matter of the estate of the deceased in that instance. The filing of a cause at the High Court to revoke the resident magistrate's court grant does not shift jurisdiction over the entire matter of the estate to the High Court, the said cause merely invites the High Court to exercise the limited power given to it under section 48 of the Law of Succession Act. In exercising power under section 48, the High Court does not take away the jurisdiction conferred by that provision to the

resident magistrate's court. It does not take over the cause from the resident magistrate's court, which retains jurisdiction over the estate even as the grant it had made is sought to be revoked by the High Court.

7. The effect of this is that the primary succession cause would be at the resident magistrate's court. 'Primary cause' as it is this court which has power under section 48 of the Act to entertain any application, other than that for revocation of grant, and to make such orders and pronounce such decrees as may be expedient with respect estates that fall under that court's jurisdiction. Since the resident magistrate cannot pronounce on an application for revocation of grant, once an issue arises as to the validity of the grant, that issue, and that issue then goes to the High Court under section 48. I would repeat that that is the only issue that goes to the High Court under section 48. For all purposes the matter initiated under section 48 of the Act at the High Court for revocation of the magistrate's grant is secondary to the primary cause before the magistrate, and in that respect the said matter should be commenced at the High Court as a miscellaneous cause.
8. Once the High Court exercises its jurisdiction under section 48, it becomes *functus officio* and should thereafter leave it to the resident magistrate's court to finalise the primary succession cause on the other aspects. If the High Court had called for the resident magistrate's court file for the purpose of the revocation application, it ought to order the return of the lower court file to the primary court. The High Court should only take over a succession cause from the resident magistrate's court where it finds that that other court has no pecuniary jurisdiction.
9. In view of what I have stated above, there is no basis upon which I can entertain the Summons for Confirmation of Grant dated 22nd November 2011. That should be a matter within the province of the Chief Magistrate in Thika **CMCSC No. 219 of 2011**.
10. The application dated 22nd November 2011 is hereby struck out. The grant to Nathaniel Njoroge Kamau and Ruth Wambui Kamau out of this cause is hereby cancelled. The Thika Chief Magistrate is hereby directed to issue a grant of letters of administration to Nathaniel Njoroge Kamau and Ruth Wambui Kamau out of Thika **CMCSC No. 219 of 2010**. Upon the grant being issued the administrators shall proceed to apply for its confirmation in that cause.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE