



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**SUCCESSION CAUSE NO. 6 OF 2012**

*IN THE MATTER OF THE ESTATE OF VERONICAH MUKAMI alias MUTERU (DECEASED)*

**FRANCIS MUTERU GATHOGO.....APPLICANT**

**VERSUS**

**WINNIE NYANJUGU.....1<sup>ST</sup> RESPONDENT**

**MARY WANJIRU.....2<sup>ND</sup> RESPONDENT**

**JULIUS GATHOGO MUTERU.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

The applicant filed a summons for revocation or annulment of grant in respect of the estate of Veronica Mukami Muteru alias Wakiru Muteru (deceased) who died intestate on 30<sup>th</sup> October, 2003; it is apparent from the face of the summons that the grant was issued by the subordinate court to the respondents on 12<sup>th</sup> September, 2006 and was subsequently confirmed by the same court on 19<sup>th</sup> March, 2008.

The summons, which was dated 9<sup>th</sup> October, 2012, was brought to court under the provisions of **section 76 of the Law of Succession Act, Chapter 160 Laws of Kenya** and **Rules 44(1) and 73 of the Probate and Administration Rules**. It is premised on the grounds that the grant was obtained by concealment from the court of something material to the cause to the extent that the applicant's interests were not disclosed and that he was not involved in the succession cause in the subordinate court; that the proceedings out of which the grant was obtained were defective in substance because the court in which they were instituted did not have jurisdiction to entertain the cause in the first place; that the mode of distribution of the estate was against the Law of Succession Act in the sense that the applicant had not renounced his share and that his consent was never obtained; and finally, the applicant was disinherited. The summons was supported by the applicant's own affidavit sworn on 9<sup>th</sup> October, 2012.

Alongside the summons for revocation or annulment of grant, the applicant also filed a summons in general for under Rule 73 of the Probate and Administration Rules seeking for a prohibitory order apparently restraining alienation of a parcel of land referred to as Loc. 14/Kairo/100 pending the hearing and determination the main summons for revocation and nullification of grant. The summons was dated

23<sup>rd</sup> October, 2012.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed replying affidavits respectively sworn on 10<sup>th</sup> October, 2012 opposing the summons for revocation of grant; they also filed a notice of preliminary objection dated 10<sup>th</sup> December, 2012. The 3<sup>rd</sup> Respondent filed his affidavit sworn 20<sup>th</sup> March, 2013 conceding to the application.

On 28<sup>th</sup> March, 2013 directions were taken to the effect that the summons for revocation of grant proceeds by way of viva voce evidence; parties also agreed that the court dispenses with the preliminary objection and the summons for the prohibitory order.

After hearing their respective witnesses parties filed and exchanged written submissions; however, I have noted that the submissions filed on behalf of the respondents are in respect of the application for the prohibitory order which the court dispensed with. As things stand no submissions were filed for the respondents in respect of the summons for revocation of grant.

Without delving into the parties' evidence, one issue that stands out and which, in my humble view, this summons turns on is whether the subordinate court was seized of jurisdiction to entertain the petition that was filed in its court in the **Senior Principal Magistrates' Court Succession Cause No. 4 of 2006**.

According to the applicant, the value of the deceased's estate was estimated at Kshs. 500,000/=; this contention was not disputed and could not be so disputed because that is the figure indicated in form P & A 5 filed by the respondents in their petition for letters of administration. If that was the value of the deceased's estate, did the subordinate court have jurisdiction to make any grant or even make any order in respect of that estate in the context of the Law of Succession Act? The answer to this question can be found in the Act itself.

The jurisdiction of High Court and that of the magistrate's courts in matters governed by the **Law of Succession Act, Chapter 160** Laws of Kenya is set out in **Sections 47 to 50** of that Act. **Section 48** thereof defines the extent of the magistrate's jurisdiction. That section provides as follows:

***“48. Notwithstanding any other written law which limits jurisdiction, but subject to 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.”***

The jurisdiction of the magistrate's court to entertain an application or determine any dispute or pronounce any decree or order is monetarily capped. How far the court may exercise its jurisdiction is determined by the value of the estate in respect of which the court may be called upon to determine a dispute, pronounce a decree or an order.

Under this provision, a magistrate's court may also make a grant of representation as long as the value of the estate in respect of which a representation is made does not exceed Kshs. 100,000/-.

It has been noted that the value of the estate in issue is indicated to be Kshs. 500,000/= which, under section **48 of the Law of Succession Act**, is no doubt well beyond the jurisdiction of a magistrate's court. It follows that when the magistrates' court usurped the proceedings in Murang'a Senior Principal Magistrates' Court Succession Cause No. 4 of 2006, it acted *ultra vires* the law of Succession Act and more particularly section 48 thereof. In the absence of a valid authority or requisite jurisdiction, the proceedings in Murang'a Senior Principal Magistrates' Court Succession Cause No. 4 of 2006 are a

nullity and nothing valid, regardless of whether it was an order, a judgment, a grant or a confirmation of such grant, could possibly come out of such proceedings.

Speaking of the importance and the need for jurisdiction in decision making in the case of the **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd (1989) KLR 1** the learned judges of the Court of Appeal (Nyarangi, Masime and Kwach JJA, as they then were) aptly stated at page 14 of their decision in that case as follows:

*“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 the proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

The court went further to cast any doubt as to what jurisdiction in this context means and quoted a passage from **Words and Phrases Legally defined, Volume 3** at page 113 where it is stated:

*“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented before it in a formal way for its decision. The limits of this authority are imposed by statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of particular facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.” (Underlining mine)*

There is no doubt that in view of **section 48** of the **Law of Succession Act**, the magistrates court usurped the jurisdiction which it does not have and therefore all that it is engaged Murang’a Senior Principal Magistrates’ Court Succession Cause No. 4 of 2006, was an exercise in futility. The succession cause was null from the very beginning and nothing of any legal consequence can be said to have come from it.

Going back to section 76 of the Law of Succession Act under which the summons was brought to court it is clear from paragraph (a) thereof that:-

**76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or of its own motion that-**

**(a) the proceedings to obtain the grant were defective in substance;**

It appears to me that in the absence of jurisdiction the proceedings in **Murang’a Senior Principal Magistrates’ Court Succession Cause No. 4 of 2006** fit the description of proceedings said to be “defective in substance” as contemplated under **section 76(a)** of the Law of Succession Act.

The inevitable conclusion that I have come to is that the grant issued to the respondents on 12<sup>th</sup> September, 2006 and subsequently confirmed on 19<sup>th</sup> March, 2008 in respect of the estate of Veronica Mukami Muteru alias Wakiru Muteru (deceased) in **Murang’a Senior Principal Magistrates’ Court Succession Cause No. 4 of 2006** is a nullity and is hereby revoked and or annulled. The deceased’s estate shall remain or revert to her name until such a time that a proper petition filed in a court of competent jurisdiction has been determined. The applicants summons dated 9<sup>th</sup> October 2012 is allowed but parties

will bear their own respective costs.

**Dated signed and delivered in open court this 23<sup>rd</sup> day of May, 2014**

**Ngaah Jairus**

**JUDGE**