



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC P & A APPLICATION NO. 66 OF 2014**

**IN THE MATTER OF THE ESTATE OF M'RIUNGU KAUMBUTHU ALIAS RIUNGU  
KAUMBUTHU.....DECEASED**

**ARISON MURITHI KAUMBUTHU .....PETITIONERS**

**VERSUS**

**CELINA MUTHONI BERNARD & 7 OTHERS.....APPLICANTS**

**J U D G M E N T**

1. The applicants through summons for revocation of grant brought pursuant to section 76(b) and d(iv), 47, 48 and 49 of the Law of Succession Act and Rule 73 and 49 of the Probate and Administration Rules and under section 1A, 1B 3 & 3A of Civil Procedure Act sought revocation and annulment of confirmation of grant issued to the petitioners on 26th September, 2007 and rectified grant of confirmation issued on 26th February, 2014, cancellation of any sub-division to the land parcel No. KIRINGANI/MUIRU/403 in the name of the deceased.
2. The summons is based on the grounds on the face of the summons inter alia; that the succession cause was filed without knowledge and consent of all beneficiaries; that the grant was obtained by means of concealment of material facts; that the beneficiaries did not consent to the distribution; that the administrators did not proceed diligently with the administration of the estate; that the principal magistrate court at Chuka had no jurisdiction to entertain the succession cause because the estate of the deceased exceeded Ksh. 100,000/= and that the distribution was discriminatory and offended the provisions of the constitution. The summons is further supported by affidavit of C.M Bernard dated 20th March 2014 which raises the same ground as are on the face of the summons.
3. The petitioner opposed the application through his replying affidavit dated 22nd July, 2014 alleging that he had filed the petition at Chuka Law Court and distributed the estate as per wishes of their late parents. He contended the applicants are his sisters and each of them was given her share according to the wishes of his parents. He contended that the applicants were aware of the filing of this cause.
4. The parties advocates consented to the application being determined by way of affidavits. Mr. J.D. Mbaya learned advocate, for the applicants/objectors submitted on the main ground on jurisdiction and referred to paragraph 10 of the applicants affidavit and also section 47 of the Law of Succession Act. The applicants/objectors contended that the deceased estate was worthy more than Ksh. 100,000/= therefore the Principal Magistrate Chuka Law Court's lacked jurisdiction to

hear and determine the succession cause. Mr. J. D. Mbaya, learned counsel, submitted that the petitioner in his replying affidavit did not dispute the value of the deceased estate. He further submitted the objectors being sisters to the petitioner were not adequately provided for though entitled to equal share.

5. Mr. E. Ogoti, Learned Advocate, for the petitioners relied on the replying affidavit of the petitioner submitting that the petitioner distributed the estate as per the wishes of the deceased. He urges the applicants are married and have been provided elsewhere.
6. Section 48 of the Laws of Succession Act limits jurisdiction of Resident Magistrate's court as regard entertaining and determining any dispute brought under the Law of Succession Act in respect of any estate to the gross value of which doesn't exceed Hundred Thousand Shillings.

Section 48 of the Law of Success Act provides:-

**“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 maybe 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”.**

7. The applicants deponed that the value of the deceased estate exceed Ksh. 100,000/=. This point was not challenged by the petitioner in his replying affidavit. The contention by the petitioner's counsel that no valuation report was filed holds no water at all as the petitioner in his affidavit in Form P & A 5 gave the value of the estate at Ksh. 200,000/= which though an underestimation for lands in Meru is above the jurisdiction of the Magistrate courts in Probate and Administration matters. I find in spite of lack of valuation report the value of the deceased estate is above the jurisdiction of the Magistrates court as per provisions of section 48 of the Law of Succession Act.
8. In view of the foregoing, I find that the Principal Magistrates Court at Chuka acted without jurisdiction and this ground alone is sufficient to dispose of this summons and the court need not go into the other grounds.
9. The petitioner did not concede the application alluding to the fact that it was his parents' wishes to have the matter filed at Chuka and to carry out the distribution the way he had proposed. He did not involve the objectors neither did he demonstrate that he had sought their consent and none was filed. I therefore find that the petitioner acted without the knowledge and the consent of the applicants/objectors.
10. The upshot is that the applicants/objectors application dated 20<sup>th</sup> March, 2014 is allowed as the Magistrate court acted without jurisdiction and the petitioner obtained the grant by means of concealment of material facts and without consent and knowledge of the applicants/objectors. I therefore proceed to make the following orders:-
  - a. *The temporary grant issued on 10<sup>th</sup> May, 2006 and confirmed grant issued on 26/9/2007 and rectified on 26<sup>th</sup> February, 2014 is annulled.”*
  - b. *The petitioner and 1<sup>st</sup> applicant are appointed joint administrators to the deceased estate and*

*temporary grant do issue jointly to the two forthwith and application for confirmation of the grant within 90 days from today.*

- c. *All sub-divisions to land parcel No. KIRINGANI/MUIRU/403 and titles issued thereto are cancelled and LR NO. KIRINGANI/MUIRU/403 do revert back into the names of the deceased M'RUIGA KAUMBUTHU NKUNE alias RUIGA KAUMBUTHU.*
- d. *The applicants gets costs of this application.*

**DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF OCTOBER 2014.**

**J. A. MAKAU**

**JUDGE**

*Delivered in open court in presence of:-*

Mr. J.D. Mboya for applicants/objectors

Mr. E. Ogot for the petitioner

**J. A. MAKAU**

**JUDGE**