



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MURANG'A**  
**SUCCESSION CAUSE NO. 889 OF 2013**  
***(IN THE MATTER OF THE ESTATE OF KIOKO NTHONGOI (DECEASED))***

**NICHOLAS MUTUNGA KIOKO.....APPLICANT**

**VERSUS**

**ANCENT NDAVI KIOKO.....1<sup>ST</sup> RESPONDENT**

**BONIFACE MUSYOKA KIOKO.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The applicant herein filed a summons dated 19<sup>th</sup> July, 2013 seeking to annul or nullify the letters of administration apparently made to himself and the respondents in respect of the estate of the late Kioko Nthongoi (deceased) who died intestate on 7<sup>th</sup> September, 1997. The grant is said to have been made in the **Thika Chief Magistrates Court Succession Cause No. 389 of 2003**.

There are only two grounds upon which the application is made; these are that:-

- a. That the proceedings to obtain the grant were defective in substance; and,
- b. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.

The application is stated to have been brought under **Section 76(a), (b) and (c)** of the **Law of Succession Act (Cap 160)** and **rules 44(1) and (2) and 47** of the **Probate and Administration Rules**; it was supported by the affidavit sworn by the applicant on 19<sup>th</sup> July, 2013. The respondents opposed the summons and on 15<sup>th</sup> August, 2013 they filed a replying affidavit in that regard.

When the matter came up for directions on 9<sup>th</sup> April, 2014, only counsel for the respondents appeared; he proposed that the summons be disposed of by way of written submissions based on affidavit evidence on record. Directions were given accordingly but the court also directed that the original record in **Thika Chief Magistrates Court Succession Cause No. 389 of 2003** be availed. By the **12<sup>th</sup> September, 2014**, the court's directions had been complied with, but once again, counsel for the applicant did not appear in court despite the fact that his firm of advocates had been duly served.

I have considered the parties pleadings and the respective affidavits filed in support and in opposition to

the summons of confirmation of grant; I have also considered the submissions filed by counsel for the applicant.

I have gathered from the original record in **Thika Chief Magistrates Court Succession Cause No. 389 of 2003** that the estimated value of the deceased's estate as stated in **form P&A 5** was **Kshs. 400,000/=**. Although this fact was not specifically brought to the attention of the court by any of the parties, I consider it to be fundamental to question whether the magistrates court had the requisite authority to make the grant and confirm it; it is a question that one cannot overlook or ignore and to the extent that it goes to the jurisdiction of the resident magistrates court in all cases covered by the Law of Succession Act, I choose to address it here as a preliminary point.

The jurisdiction of the magistrates' courts vis-à-vis that of the High Court in all cases falling under 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.”***

It is apparent from this provision that 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 the same 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 is not in dispute that in the cause that was filed in the magistrates' court, the value of the estate of the deceased was Kshs. 400,000/=; it is therefore apparent that the extent of the estate was beyond the jurisdiction of the magistrates' court in which it was lodged whose limit, as noted, is set out in **section 48 of the Law of Succession Act**.

In my earlier decisions, whenever this issue has arisen, I have taken the position that the question of a court's jurisdiction is not a procedural issue that a court can perfunctorily dispense with and direct its focus on the merits of a particular case or what may be considered as more substantive issues. Jurisdiction goes to the competency of the court or the root of the authority of that court to determine or not determine a particular issue. Its gravity in decision making was put more aptly by the learned judges of the court of appeal, Nyarangi, Masime and Kwach JJA (as they then were) in the **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd (1989) KLR 1**. The learned judges said of jurisdiction at page 14 of their decision 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 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.”*

Considering that magistrates’ courts do not have unlimited jurisdiction in succession matters governed by the Law of Succession Act, it was incumbent upon those courts to inquire into their jurisdiction, as a preliminary step, before making any order of whatever nature in **Thika Chief Magistrates Court Succession Cause No. 389 of 2003**. If the court, in the cause in issue, had taken this path it would certainly have realised that in view of the value of the deceased’s estate, it did not have jurisdiction to entertain the petition for grant of letters of administration.

I would, in the circumstances, agree with the applicant, that the proceedings in which the grant was obtained and subsequently confirmed, were in the words of section 76 (a) of the Act defective in substance and were null ab initio.

I would, therefore, follow the decision of the Court of Appeal in the **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd** and conclude that since the subordinate court took upon itself jurisdiction which it did not possess, its orders or decisions amounted to nothing. For this reason no letters of administration can be said to have been validly granted or confirmed in **Thika Chief Magistrates Court Succession Cause No. 389 of 2003**. Accordingly, the grant of letters of administration intestate in respect of the estate of Kioko Nthongoi and purportedly confirmed on 25<sup>th</sup> October, 2012 in **Thika Chief Magistrates Court Succession Cause No. 389 of 2003** is hereby annulled. There will be no orders as to costs.

**Dated, signed and delivered at the High Court in Murang’a this 10<sup>th</sup> day of December, 2014**

Ngaah Jairus

**JUDGE**