



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
SUCCESSION CAUSE NO. 137 OF 2013

IN THE MATTER OF THE ESTATE OF ISAAC NGIRI NGURA (DECEASED)

ISAAC NGIRI MWANGI.....PETITIONER

VERSUS

VERONICA WANGARI ISAAC & OTHERS.....OBJECTORS

RULING

This succession cause was initially filed in the Senior Principal Magistrates Court at Murang'a as Succession Cause No. 12 of 2011. In the course of the court proceedings in the lower court, Mr Kamau, counsel for the objector brought to the attention of the court the fact that the value of the estate in respect of which the petition for letters of administration had been filed was Kshs. 1.5 Million and therefore beyond the jurisdiction of the magistrate's court. Counsel asked the court to transfer the file to the High Court which alone was seized of jurisdiction to entertain a petition for letters of administration of an estate whose value exceeded Kshs 100,000/=.

The learned magistrate concurred with the sentiments expressed by the learned counsel for the objector and on 27th April, 2012, she directed that the file be transferred to the High Court at Nyeri. The magistrate's order was obviously made in error as a magistrates court has no powers to transfer any suit to the High Court and there is no provision either in the Law of Succession Act itself or the Rules made under Section 97 of the Act that provides for such powers or provides for a transfer of a petition or a succession cause from the magistrates' court to the High Court. Be that as it may, by a letter dated 27th June, 2012 the Senior Principal magistrate forwarded the file to the Deputy Registrar of the High Court at Nyeri. The Deputy Registrar duly acknowledged receipt of the file by his letter dated 9th July, 2012.

It would appear that when the file was received at the High Court at Nyeri, it was entered in the register as **High Court Succession Cause No. 707 of 2012** this is the number that appears in the order made by my brother, Hon. Mr Justice Wakiaga on 12th October, 2012 when he directed that this file be transferred to this court. The High Court in Murang'a had just been gazetted more particularly on 1st October, 2012 and the succession cause happened to fall within its jurisdiction. The registry, at this court duly registered this cause as Succession Cause No. 137 of 2013.

On 29th October, 2013, this cause was fixed for directions; on that date Mr Muraguri appeared for the petitioner. There was no representation on the part of the objector though it appears from the record that the objector's advocates, Messrs. Mwangi Kamau & Company Advocates had been served with a hearing notice for the 29th October, 2013.

In his brief address to the court Mr Muraguri asked the court to allow the petitioner's summons dated 13th March, 2012 and issue letters of administration of the estate of Isaac Ngiri Ngura to Isaac Ngiri Mwangi.

Having initially been filed in the magistrate's court which, for want of jurisdiction, purported to transfer this cause to the High Court, I have had to first consider whether indeed there is before me a valid petition or succession cause for grant of letters of administration.

The jurisdiction of the courts both the High Court and the magistrates' 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.

The jurisdiction of the magistrate to entertain an application, pronounce a decree or an order or to make a grant of representation in respect of an estate governed by the Law of Succession Act, regardless of its value, is taken away and is exclusive to the High Court where both the High Court and the magistrate's court exist at the same station.

The value of the estate which is the subject of the succession cause that was filed in the magistrate's court before it was transferred to the High Court was stated in form P & A 5 as Kshs. 1.5 Million which, under section 48 of the Law of Succession Act, was no doubt well beyond the jurisdiction of the magistrate's court. The question is what is the legal effect of a petition or succession cause, such as the cause herein, filed in a court without jurisdiction? Asked differently, is a petition filed in a court without jurisdiction a valid petition? If it is invalid, can this invalidity be cured by the petition's transfer to a court of competent jurisdiction?

The question whether a suit filed in a court without jurisdiction to entertain it can, for that reason of want of jurisdiction, be transferred to a court of competent jurisdiction has been asked in several cases before; the consistent answer appears to be that such suits are a nullity ab initio and a transfer to a court of competent jurisdiction cannot validate them.

In the **Nairobi High Court Miscellaneous Civil Application No. 7 of 2011, Edward Murangiri Mugambi versus Habib Bank Limited**, Njagi J while referring to the Kenyan case of **Omwoyo versus African Highlands & Produce Co. Ltd (2002) 1KLR 698** (the decision of Ringera J, as he then was) and the Ugandan case of **Kagenyi versus Misiramo & Another (1968) EA 48** the learned Judge had this to say on this issue;

“Where a matter is filed in a court which has no jurisdiction, then there is no suit, properly so called, which has been filed. Consequently, there is no suit, so to speak to be transferred in this instance”

By parity of reasoning a petition or a succession cause filed in a court without jurisdiction, is an incompetent petition or succession cause and thus non-existent and therefore there is nothing to transfer from one court to another. To the extent that the Succession Cause initially filed in the magistrates' court as Succession Cause No. 12 of 2011 was filed in breach of Section 48 of the Law of Succession Act in a court without jurisdiction, that cause never existed and it is a nullity and being such a nullity there was nothing that was transferred to the High Court at Nyeri and subsequently to Murang'a. Consequently, High Court Succession Cause No. 707 of 2012 (Nyeri) and High Court Succession Cause No.137 of 2013(Murang'a) are both nullities. In the absence of a valid petition before me, the summons dated 13th March 2012 is also a nullity is hereby so declared.

Dated signed and delivered in open court this 29th day of November, 2013

Ngaah Jairus

JUDGE