



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KISII**

**Succession Cause 474 of 2009**

**MARY CHEPKAMOR FRANCIS )**

**LEKAKENY NTIRRA ) ..... OBJECTORS/APPLICANTS**

**CATHERINE KORIKO )**

**VERSUS**

**EVALINE ROSA ..... PETITIONER/RESPONDENT**

**RULING**

**Section 48(1) of the Law of Succession Act** limits the jurisdiction of a Resident Magistrate's court to issue grants for letters of administration to estates whose gross value does not exceed Kshs. 100,000/=.

A grant issued by a court without jurisdiction is a null and void and of no legal consequence. In **MACFOY –VS- UNITED AFRICA LIMITED** [1961] 3 ALL ER 1169, Lord Denning said at Pg. 1172:

**“If an act is void, then it is in law a nullity  
and not a mere irregularity. It is not only  
bad but incurably bad. There is no need  
for an order of the court to set it aside.  
It is automatically null and void without  
more ado, though it is sometimes  
convenient to have the court declare it  
to be so. And every proceeding which  
is founded on it is also bad and incurably**

**bad. You cannot put something on nothing  
and expect it to stay there. It will  
collapse.”**

In Succession Cause No. 9 of 2005 in the Senior Resident Magistrate’s Court at Kilgoris, Evarline Rosa applied for letters of administration in respect of the estate of **Kimayio Ole Ntira**, hereinafter referred to as “**the deceased.**” In the affidavit in support of the petition, the petitioner said that she was a daughter of the deceased. She had earlier obtained a letter from James Ole Kaipoi, the Chief, Oloibor-Soito Location, stating that she was a daughter of the deceased.

In her affidavit, the petitioner deposed that the estate of the deceased was valued at approximately Kshs. 300,000/=. Despite that express disclosure, W.K. Chepseba, Senior Resident Magistrate, Kilgoris, went ahead to issue letters of administration to the petitioner. The said court simply acted *ultra vires* its jurisdiction.

Thereafter the grant was confirmed and the petitioner proceeded to transfer to herself land parcel **No. Transmara/Oloiborsoito/12** that was previously owned by the deceased.

On 17<sup>th</sup> August, 2009 the applicants herein applied for revocation or annulment of the said grant. They also urged the court to annul the transfer and the title deed aforesaid on the ground that the grant was obtained fraudulently and by means of an untrue allegation that the petitioner was a daughter of the deceased whereas she was a grandchild.

The petitioner filed a replying affidavit and denied that she was the deceased’s grandchild, she reiterated that she was the only child of the deceased.

I have perused the written submissions filed by the advocates for the respective parties hereto. Though the applicants did not raise the issue of jurisdiction of the Kilgoris Senior Resident Magistrate’s court, it is obvious that the court lacked jurisdiction to issue the grant in view of the disclosed value of the deceased’s estate. The grant was a nullity and so was everything else that was done pursuant to the issuance of the same.

The application must be allowed for that reason alone.

The title deed that was obtained by the petitioner is also ordered cancelled. The petitioner shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2009.**

**D. MUSINGA**

**JUDGE.**

**20/11/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Nyasimi for the Applicant

Mr. Oguttu for the Respondent

**Court:** Ruling delivered in open court on 20<sup>th</sup> November, 2009.

**D. MUSINGA**

**JUDGE.**