



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Misc.Civil Appli. 14 of 2008

ELSA ADHIAMBO AKWIRI)

JOSEPH JUMA OLAO)

FRANCIS ORIANI)

SAMWEL OTIENO ODINGO)

ELLY WAJEWAWA ABUORO)

WILLIAM NGESO AYORO)

ALBERT OSIR) APPLICANTS

DAVID OCHIENG SUNA)

THOMAS OKOTH)

PHILIP OTIENO NGESO)

JULIUS OPIYO MIKAMBO)

BASEL BONYO)

PHILIP OYOLA)

JOSEPH OCHEING ANOGO)

JANE AKONGO ODONGO)

VERSUS

MARY AWINO OKUMU)

JULIUS AKWIRI OWALA) RESPONDENTS

CHARLES OCHIENG ONYANGO)

RULING

By an application dated 28/2/2008, the applicants sought the following orders:

1. The Grant of letters of Administration issued to the Respondents by the Principal Magistrate's court Migori in Succession cause No.335 of 2007 on the 30th October, 2007 and confirmed on the 11th January, 2008 in the Estate of the above named deceased persons be revoked and or annulled.
2. The registration of Title numbers
 - (i) KANYAMKAGO/KAWERE II/3792 in the of Mary Awino Okumu and Julius Akwiri Owala.
 - (ii) KANYAMKAGO/KAWERE II/3793 in the names of Julius Akwiri Owaga..
 - (iii) KANYAMKAGO/KAWRE II/3795 in the name of Mary Awino Okumu.
 - (iv) KANYAMKAGO/KAWEREII/37/94 in the name of Charles Ochieng Onyango be revoked upon granting of prayer No.1 above.
3. There be an order of injunction restraining the respondents from intermeddling with the deceaseds' estate in any manner adverse to the interests of the applicants herein.

All the parcels of land described in prayer No.2 above are sub-divisions of KANYAMKAGO/KAWERE II/783.

One of the major grounds upon which the application is premised is that the subordinate court lacked jurisdiction as the value of the entire Estate was beyond Kshs.100,000/=.

When the first and the second respondent applied for letters of administration in the Principal Magistrate's court at Migori, they stated that the value of KANYAMKAGO/KAWERE II/783 was Kshs.80,000/=. They so stated in a joint affidavit which they swore on 30th August, 2007. The original parcel of land measures 8.8 Hectares or 21.74 Acres.

The applicants filed a Valuation report dated 2nd April, 2008 which showed that the value of the four sub-divisions excluding the developments thereon is Kshs.2,175,000/=.

The respondents disputed the contents of the said valuation report. Through their advocates, M/S. Oguttu-Mboya & Co, they filed a notice to cross examine the maker of the said report, Auma D. O., the

District Lands Officer, Kisii Central, Gucha & Migori Districts.

Jurisdiction of the subordinate courts in probate and administration matters is determined by value of the estate sought to be administered. Where the value of the estate is beyond Kshs.100,000/=, the subordinate court will not be vested with jurisdiction. Jurisdiction is the bedrock of any decision or action taken by any court. It is therefore of paramount importance that the issue be determined in the first instance before this court considers any of the other allegations raised by the applicants.

In that regard, I direct that the respondents do instruct a registered valuer to inspect, value and state the open market value of the following properties for court purposes.

(a) KANYAMKAGO/KAWERE II/392

(b) KANYAMKAGO/KAWERE II/393

(c) KANYAMKAGO/KAWERE II/394

(d) KANYAMKAGO/KAWERE II/395

(original No.KANYAMKAGO/KAWERE II/783).

The valuation report should be filed and served within 14 days from the date hereof. This matter will be mentioned on 4th July, 2008. The interims orders are extended until the aforesaid date.

DATED, SIGNED and DELIVERED at KISII this 6th day of June, 2008.

D. MUSINGA

JUDGE

Delivered in open in the presence of:

Mr. Kisera for the Applicants.

Mr. Oguttu for the Respondents.

D. MUSINGA

JUDGE.