



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Shajama Mohamed (Deceased) (Miscellaneous Application
30 of 2022) [2025] KEHC 1509 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION 30 OF 2022
RN NYAKUNDI, J
FEBRUARY 14, 2025
IN THE MATTER OF THE ESTATE OF AM (DECEASED)**

**IN THE MATTER OF
HASSAN JAMA MOHAMED APPLICANT**

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 3rd October 2022 premised upon Article 165 of *the Constitution* of Kenya 2010 and section 17 & 18 of the *Civil Procedure Act* where the Applicant is seeking the following orders:
 - a. That the Honourable Court be pleased to transfer Eldoret P&A NO. E050 of 2022 from the Chief Magistrate Court to itself and try and/or dispose of the same.
 - b. Costs of this Application be provided for.
2. The Application is based on the grounds on the face of it among others:
 - a. That the said cause was erroneously filed at the Chief Magistrate Court.
 - b. That the Estate is worth more than Kshs. 20,000,000/=
 - c. That Estate is in excess of the sub-ordinate court's pecuniary jurisdiction so that the said court cannot entertain the cause.
 - d. That's there will be no prejudice to any beneficiary should the order sought in this Application be granted.
3. The Application is supported by the annexed affidavit dated 3rd October 2022 sworn by Hassan Jama Mohammed, the Applicant herein where she avers as follows:



- a. That by a petition dated 13th January 2022, the Petitioner Abdi Awil Mohammed brought this suit on our behalf and his own behalf as personal representative of the Estate of Asha Jama Mohamed, deceased who died intestate, seeking letters of Administration Intestate.
- b. That the suit was filed in the Chief Magistrates' Court as file No. P&A E050 of 2022.
- c. That the truth is that the Estate exceeds the ordinary pecuniary jurisdiction of the Chief Magistrates Court.
- d. That the High Court is vested with appropriate jurisdiction to try and/or dispose this cause.
- e. That it is in the interest of justice that the parties be heard by appropriate Court and the real questions in controversy be therein identified, tried and adjudged.
- f. That no beneficiary stands to suffer any prejudice should the Honourable Court make the orders prayed for in this application.
- g. I pray that this application be allowed as prayed.

Analysis and Determination

4. I have read and considered the application and there is only one issue manifest for determination i.e. whether this court should transfer Eldoret P&A NO. E050 of 2022 from the Chief Magistrate Court to the High Court on grounds of lack of pecuniary jurisdiction

Whether this court should transfer Eldoret P&A NO. E050 of 2022 from the Chief Magistrate Court to the High Court on grounds of lack of pecuniary jurisdiction

5. The above case calls for the examination of the legal framework governing the jurisdiction in succession matters. The jurisdiction of magistrates' courts in succession matters is governed by Section 48(1) of the *Law of Succession Act*, as amended by Section 23 of the Magistrates Courts Act, 2015, which provides:

“Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application 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 the pecuniary limit prescribed under section 7(1) of the Magistrates Courts Act, 2015.”

6. Jurisdiction is crucial in every case. It must be present when the lawsuit is initially filed. If a suit is filed without jurisdiction, the only option is to withdraw it and file a complaint in the court that has jurisdiction. A suit filed without jurisdiction is dead on arrival and cannot be revived. Without jurisdiction, the Court cannot confer jurisdiction on itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. The locus classicus in this subject, this Court pronounced; Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989):

“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 proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... 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 judgement is given.”



7. Similarly, section 18 of the *Civil Procedure Act* provides for the Power of High Court to withdraw and transfer case instituted in subordinate court and it states that: (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage— (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter— (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
8. These words were echoed by this Court in *Equity Bank Limited Vs Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR* in the following words: -

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, it is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists.
9. The current pecuniary jurisdiction of magistrates' courts in succession matters is Kshs. 20,000,000/= . In the present case, the applicant has presented a valuation report showing the estate to be worth Kshs. 28,400,000/=, which is well beyond the magistrate's court jurisdiction. While the respondents have presented a competing valuation of Kshs. 17,000,000/=, this court must err on the side of caution when dealing with questions of jurisdiction.
10. The competing valuations present a real possibility that the estate's value exceeds the magistrate court's jurisdiction. In succession matters, it is crucial to ensure that the entire estate is properly accounted for and distributed. Given the substantial disparity in valuations and the serious consequences of proceeding in a court without jurisdiction, prudence dictates that the matter be handled by the High Court, which has unlimited original jurisdiction in such matters.
11. Furthermore, Article 165(3)(a) of *the Constitution* of Kenya vests the High Court with unlimited original jurisdiction in all civil matters. Where there is doubt about jurisdiction, it is safer to have the matter determined by a court of unlimited jurisdiction rather than risk having the entire proceedings declared a nullity at a later stage.
12. In the circumstances, I find merit in the application. The interests of justice would be better served by transferring these proceedings to the High Court where there will be no question about jurisdictional competence.
13. Consequently, I make the following orders:
 - a. The application dated October 3, 2022 is hereby allowed.
 - b. Eldoret Chief Magistrates Court P&A No. E050 of 2022 is hereby transferred to the High Court at Eldoret for hearing and determination.
 - c. The costs of this application shall be in the cause.



14. It is so ordered.

DELIVERED VIA CTS DATED AND SIGNED AT ELDORET ON THIS 14TH FEBRUARY 2025

R. NYAKUNDI

JUDGE

