



REPUBLIC OF KENYA



In re Estate of Ali Issa Ambari (Deceased) (Miscellaneous Application E095 of 2023) [2025] KEHC 3740 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION E095 OF 2023**

**M THANDE, J
MARCH 21, 2025**

BETWEEN

IJAZ HUSSEIN GANIJEE APPLICANT

AND

FATIMA ALI ISSA RESPONDENT

RULING

1. The deceased herein, Ali Issa Ambari died intestate on 14.1.02 at Barani. A grant of letters of administration in respect of his estate was issued to Fatima Ali Issa his daughter on 23.4.21 in Malindi Chief Magistrate’s Succession Cause No. E62 of 2020. The Grant was thereafter confirmed on 2.3.22
2. The Applicant, Ijaz Hussein Ganijee filed a summons for revocation of the grant herein dated 28.7.23 seeking the following:
 1. Spent.
 2. Spent.
 3. That the Grant of Letters of Administration Intestate issued to Fatima Ali Issa made on 23rd April, 2021 and confirmed on 2nd March, 2022 be annulled and revoked.
 4. Upon issuance of prayer 3 above, the court do cancel all registrations made against the titles to the parcels of land of the estate herein based on the annulled grant and particularly the registration of ownership of Land Reference No. 29532 Lamu (Grant No. CR 59153) and Land Reference No. 29535 Lamu (Grant No. CR 59152) in the names of the beneficiaries herein.
 5. Upon issuance of prayer 3 above, the Administrator/Respondent be ordered to petition afresh for letters of administration intestate in respect of the Estate of ALI



ISSA AMBARI (Deceased) within sixty (60) days of determination of the application and serve the Applicant herein with the same and all other subsequent filings thereof.

6. Pending the hearing and determination of this application, the named Administrator/ Respondent herein her agents, servants, employees and/or legal representatives be restrained by an order of prohibition from dealing in any way howsoever with the estate of Ali Issa Ambari (Deceased) comprising Land Reference No. 29532 Lamu (Grant No. CR 59153), Land Reference No. 29535 Lamu (Grant No. CR 59152) and Land Reference No. 29615 LAMU (Grant No. CR 61620).
 7. Spent.
 8. Spent.
 9. Spent.
3. The summons is supported by the Affidavit of even date, sworn by the Applicant. The grounds upon which the summons is premised are that first, the Grant was issued by a court lacking pecuniary jurisdiction as the estate of the deceased is worth much more than Kshs. 20,000,000/=, the pecuniary jurisdiction of the Chief Magistrate's court. The Applicant contended that in her application for the Grant, the Respondent grossly undervalued the estate at Kshs. 10,000,000/=. He argued that the estate which comprises about 105 acres of land in Kipini, out of which 45 acres is beach front. The Applicant thus asserted that the proceedings to obtain the grant were defective in substance and void ab initio.
 4. Second, that the Grant was obtained fraudulently by the making of a false statement by the Applicant to wit that the estate had no liabilities. The Applicant contends that he is a creditor of the estate, having purchased 2 untitled beach front parcels of land, now known as L. R. No. 29532 and 29535, Lamu, from the deceased. Further that the deceased's ownership of the said properties was vide letters of allotment and that he died before transferring the same to the Applicant, a fact well within the knowledge of the Respondent. The Applicant thus claims that the Grant was obtained by concealing the aforesaid material facts from the court.
 5. The Applicant contends that he will suffer irreparable damage if the process of distribution of the estate of the deceased including the suit properties, proceeds.
 6. The Respondent opposed the summons by a notice of preliminary objection dated 20.9.23 and a supporting affidavit sworn on even date. The objections are that the estate is not aware of the sale as the Applicant has to date not identified the vendor. Further that the exhibited agreement for sale is a forgery and the signature therein is not of the deceased. Further that the estate has been distributed to the beneficiaries and she cannot be sued as an individual. Further that the lower court had jurisdiction and that the exhibited agreements are for less than Kshs. 4,000,000/=, indicating that the Applicant also admitted the jurisdiction of the Chief Magistrate's Court. The Respondent urged the Court to direct the Director of Criminal Investigation (DCI) Malindi Police Station to investigate the signature of the deceased in the said agreements to enable the issue be determined properly.
 7. In her affidavit, the Respondent, reiterated the contents of the PO. She added that there is no identification of the deceased or any witness in the agreement. She further wondered why, given that the purported sale agreement was done in 1999 and her father died 3 years after in 2002, the Applicant waited 20 years to file the present suit against her. The Respondent contended that the Applicant ought to have filed the application in the Environment and Land Court (ELC) which has jurisdiction over land matters.



8. The Court will first consider the preliminary objection. The law on preliminary objections is well settled. A preliminary objection must be raised on a pure point of law. In the locus classicus on preliminary objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, Sir Charles Newbold rendered himself thus:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

And Law, JA stated:

So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

9. The law is that for a preliminary objection to be upheld, it must raise a pure point or points of law, which would completely dispose of the matter. As a minimum the factual basis ought not to be disputed.
10. The claim that the estate is not aware of the sale of the deceased's properties, and that the exhibited agreement for sale is a forgery and the signature therein is not of the deceased, are not points of law. These are all facts and are in fact disputed. The claim that the estate has been distributed to the beneficiaries is also not a point of law. All these are facts that need to be ascertained. As per Sir Newbold in the *Mukisa Biscuit case (supra)*, a preliminary objection cannot be raised if any fact has to be ascertained.
11. I now turn to the contention by the Respondent that she cannot be sued as an individual. The Respondent is the Administrator of the estate of the deceased. Section 83(d) of the *Law of Succession Act* (LSA) stipulates that one of the duties of an administrator of the estate of a deceased person is to ascertain and pay, out of his estate, all his debts. The Applicant has made a claim as a creditor of the estate. He has thus rightfully sued the Respondent in her capacity as administrator of the estate of the deceased over properties he says he purchased from the deceased.
12. The Respondent has further challenged the Application on the basis that the same ought to have been filed in the ELC which has jurisdiction over land matters. The Court is aware that by dint of Article 165(5) of the *Constitution*, it does not have jurisdiction in respect of matters falling within the jurisdiction of the ELC. Article 162(2)(b) stipulates that the jurisdiction of the ELC is to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. The claim before the Court however does not relate to use occupation of and title to land. The Applicant has approached this Court as a creditor of the estate of the deceased and his claim is that he purchased properties forming part of the estate, from the deceased. Accordingly, this Court is clothed with the requisite jurisdiction to deal with the matter.
13. For the reasons set out above, the preliminary objection is found to be without merit.



14. The grounds upon which a grant may be revoked are stipulated in Section 76 of the LSA which provides:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- a. that the proceedings to obtain the grant were defective in substance;
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
 - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either –
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - e. that the grant has become useless and inoperative through subsequent circumstances.
15. A party seeking revocation or annulment of a grant of representation must demonstrate the existence of any of the grounds set out in Section 76 of the Act.
16. The first ground on which the Applicant seeks revocation of the Grant is that the same was issued by a court without jurisdiction. The Applicant contended that the estate is worth more than Kshs. 20,000,000/= the pecuniary jurisdiction of the Chief Magistrate’s Court. On her part, the Respondent asserted that the Chief Magistrate had the requisite jurisdiction to issue the grants and that even the agreements produced by the Applicant were for less than Kshs. 4,000,000/=.
17. Section 48(1) of the LSA provides as follows regarding jurisdiction of the magistrates’ courts in succession matters:
- 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 of the Magistrates’ Courts Act (Cap 10).
18. A magistrate’s court shall have jurisdiction over a matter in respect of any estate, provided that the value thereof does not exceed the pecuniary limit prescribed under section 7 of the Magistrates’ Courts Act.



19. Section 7 of the *Magistrates' Courts Act* provides for the civil jurisdiction of a magistrate's court as follows:
1. A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
 - a. twenty million shillings, where the court is presided over by a chief magistrate;
 - b. ...
20. The pecuniary jurisdiction of the chief magistrate's court is set at Kshs. 20,000,000/=. A chief magistrate may therefore not exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter exceeds Kshs. 20,000,000/=.
21. The Applicant filed a valuation report in respect of the suit properties, pursuant to a court order, which valuation indicated the value of the properties known of L. R. No. 29532 and L. R. No. 29535 to be Kshs. 15,500,000/= and Kshs. 5,800,000/= respectively. The value of these 2 properties alone exceeds Kshs. 20,000,000/=. By dint of Section 48(1) of the LSA and Section 7(1)(a) of the *Magistrates' Courts Act*, the trial court lacked the pecuniary jurisdiction over the matter regarding the estate. Accordingly, the Court finds that the proceedings to obtain the grant were defective in substance, having been presided over by a court that lacked jurisdiction.
22. On the issue of validity of the sale of the said 2 properties to the Applicant by the deceased, this can only be decided upon hearing of viva voce evidence. The Respondent is at liberty, without the intervention of the Court, to seek the services of Director of Criminal Investigation (DCI) to investigate the veracity of signature of the deceased in the said agreements and the report can be used in evidence.
23. In the result I find that the Summons dated 28.7.23 is merited and make the following orders as are necessary for the ends of justice:
- i. The preliminary objection dated 20.9.23 lacks merit and the same is hereby dismissed.
 - ii. The grant of letters of administration issued to Fatima Ali Issa in Malindi Chief Magistrate's Succession Cause No. E62 of 2020 on 23.4.21 and confirmed on 2.3.22 is hereby annulled.
 - iii. All registrations made against the titles to the parcels of land of the estate herein and particularly the registration of ownership of Land Reference No. 29532 Lamu (Grant No. CR 59153) and Land Reference No. 29535 Lamu (Grant No. CR 59152) in the names of the beneficiaries herein, pursuant to the said Grant are hereby cancelled.
 - iv. Fresh grant is hereby issued by this Court to the Respondent Fatima Ali Issa.
 - v. The Respondent shall file and serve upon the Applicant the summons for confirmation of grant by 21.4.25.
 - vi. Mention on 5.5.25 for compliance.
 - vii. Costs in the cause.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 21ST DAY OF MARCH, 2025.

M. THANDE

JUDGE

