



**In re Estate of Esinas Angunzuzu Kalega alias Asenath Angunzuzu Khalekha (Deceased)
(Miscellaneous Application E005 of 2023) [2025] KEHC 10303 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS APPLICATION E005 OF 2023**

JN KAMAU, J

JULY 14, 2025

**IN THE MATTER OF THE ESTATE OF ESINAS ANGUNZUZU
KALEGA ALIAS ASENATH ANGUNZUZU KHALEKHA (DECEASED)
ARISING OUT OF HAMISI SUCCESSION CAUSE NO 25 OF 2012**

BETWEEN

PETER LIGALE KHALEKHA OBJECTOR

AND

LOICE KHALEKHA PETITIONER

RULING

1. In his Summons for Revocation of Grant dated and filed on 23rd November 2023, the Objector sought that Hamisi Succession Cause No 25 of 2012 be transferred to this court on ground that it had the jurisdiction to revoke the Grant issued therein.
2. He also sought that Mr Amin Mohammed Ibrahim (Director of Criminal Investigations, fast-tracks contents of investigation diary, OB No 22/19/11/2012 (Serem police Station) in relation to delayed investigations in the RCIO'S Office (Kakamega) from November, 2012 to date involving the forgery of thumb print impressions/signatures purported to belong to Elika Musimbi Mahero on court documents referred to as P & A 57 (Guarantee by personal sureties) and P & A 11 (Affidavit of justification of proposed sureties facilitating Succession Cause No 25 of 2012, whereby the Director of Public Prosecutions had directed the RCIO (Kakamega) Reference Number KAK/CRI/2-(65) dated 6th September 2013 and Reference Number ODP/PP/KAK/CAM/7/233 dated 8th August 2023, to investigate.
3. He further prayed that Elika Musimbi Mahero's thumb print/signatures, together with form P & A 57 and P & A 11, be sent to National Registration Bureau of Persons Nairobi) for verification by a



- finger print expert to ascertain if she thumb-printed the said court documents or not and the report be delivered to this court as expert evidence to give strength to the findings of the OCS-Serem.
4. He also urged this court to annul and/or revoke the Grant of Letters of Administration Intestate that was issued to the Petitioner on 15th October 2012 which the Petitioner acquired fraudulently and had been dormant for the last eleven (11) years without an application for confirmation being filed.
 5. In addition, he asked that the Land Registrar revoke registration of the Petitioner, using form RL 19 at the land department, as a proprietor by transmission to the deceased's estate parcel No Tiriki/Senende/1023.
 6. He swore an Affidavit in support of the said Summons on 23rd November 2023. He averred that the Grant of Letters of Administration subject of the estate of the deceased herein was issued fraudulently to the Petitioner herein by Hon J. K. Ngar'ngar at Hamisi Law Courts on 15th October 2012. He pointed out that the Petitioner was the co-wife to the deceased and that being the biological son, a dependent and a beneficiary of the estate of the deceased who had a prior right to administer the deceased's estate was not aware that the Petitioner, who had her own separate estate, had filed Succession Cause No 25 of 2012 at Hamisi Law Courts.
 7. He denied signing the consent Form 38 as required by the *Law of Succession Act*, Cap 160 (Laws of Kenya). He asserted that he reported the forgeries on Form P & A 57 and Form P & A 11 on court documents to the Police Station and that the Police pursued the court file which prompted Hon. E. Muleka and Hon. J. K. Ngar'ngar to write advising that he moves the High Court since it was seized with the jurisdiction to revoke the Grant that was issued fraudulently.
 8. He asserted that he had a burial permit and death certificate of the deceased which was issued on 26th May 2011 but that Musa Handa Likhago, the Chief, Mr Jeremiah Siahhi and the Petitioner secretly processed another death certificate to facilitate the succession process.
 9. He stated that the Petitioner was aged eighty-two (82) years old and was currently ailing. He asserted that she was an illiterate person who could not read and write and was assisted secretly by Musa Anda Dihago alias Musa Likhakha, a person of questionable character once jailed for impersonating a court prosecutor and soliciting for bribes outside Hamisi Law Courts, hence his fear that the said Grant of Letters of Administration Intestate may have been used for fraudulent dealings without her knowledge. He was emphatic that the said Musa Handa Likhago used the fraudulently obtained Grant of Letters of Administration to register the Petitioner as proprietor by transmission with an intention to defraud the estate.
 10. He further averred that Form P & A 57 (Guarantee by personal sureties) and Form P & A 11 (Affidavit of Justification of Sureties) were filed in court with a forged thumb print impressions/signatures purported to belong to Elika Musimbi Mahero who denied thumb printing and/or signing the documents in her recorded statement at Serem Police Station on 20th November 2012 at 1300 hours OB No 22/19/11/2012 and that the visit by the OCS to the court confirmed that Elika Musimbi Mahero did not thumb print the document or appear before the Trial Court.
 11. He urged the court to revoke the said Grant of Letters of Administration Intestate as it was founded on falsehood, misrepresentations and forgeries and that the Petitioner and the accomplices had dodged officers from Serem Police Station, prompting Directorate of Public Prosecutions (DPP) Headquarters to liaise with its branch office in Kakamega and the Directorate of Criminal Investigations (DCI-Kakamega).



12. He pointed out that the deceased's estate herein was 0.91 Ha and emanated from the Land Parcel No Tiriki/Senende/737 (Estate of Zacharia Lidwaji-Deceased) which had been given to the deceased as 0.91 Ha (Absolute Title Deed), 1.40 Ha (Absolute Title Deed) to Samuel Shazima Lidwaji and 1.53 Ha to Hezron Anagwe Litwachi.
13. He averred that the estate had been given to the deceased as a gift as per the Green card he annexed and that the Title Deed was issued on 11th February 2009. He added that the actions of the Petitioner and her agents, Samuel Shazima Lidwaji, Alex Khavenguha, Musa Handa Likhago and the Area Chief who went ahead to restrict the title three (3) years later after the death of the deceased were vexatious.
14. He was categorical that the deceased had an absolute Title Deed issued to her name and that the Petitioner was not her beneficiary and had no dispute with the deceased in her lifetime. He pleaded with the court to consider his plight as the biological son of the deceased in the interest of justice.
15. His Written Submissions were dated and filed on 5th July 2024. The Respondent did not file any Written Submissions. This Ruling was based on the Objector's affidavit evidence and his Written Submissions only.

Legal Analysis

16. The Objector invoked Article 159(1)(d) of the Constitution of Kenya, 2010 and submitted that he was aware that the Trial Court had the jurisdiction to revoke/annul grants both confirmed and not confirmed but found solace in the fact that the High Court had supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function.
17. He further cited Article 165(6) and (7) of the Constitution of Kenya, 2010 and argued that the proceedings of this matter at the Trial Court showed that the cause had not been prosecuted from the year 2012 to date and the same was stood over generally. He added that the Grant of Letters of Administration Intestate had lasted for more than one (1) year without being confirmed by the court thus contravening Section 76 (d)(i) and (e) of the Law of Succession Act. He reiterated the averments in the Affidavit he swore in support of the Summons herein.
18. Right from the onset, this court noted that the Objector's Summons for Revocation herein were subject of a Succession Cause at the Trial Court, Hamisi Law Courts. This raised the issue of whether this court had the jurisdiction to determine the said application.
19. Jurisdiction is what gives court the power to hear a dispute and is given by law. The Supreme Court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012]eKLR held that a court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by the Constitution or other written law. It could not arrogate to itself jurisdiction exceeding that which was conferred upon it by law.
20. The jurisdiction of the High Court to hear and determine Succession matters was provided for by Section 47 of the Law of Succession Act Cap 160 (Laws of Kenya) which provides as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”



21. Notably, the jurisdiction of the High Court came out clearly when juxtaposed against that of the Magistrates Courts as set out in Section 48(1) of the *Law of Succession Act*. The jurisdiction of the Magistrate’s Court was not as wide as that of the High Court.
22. Under Section 48(1) of *Law of Succession Act*, there is pecuniary jurisdiction of the magistrates appointed under Section 47 of the *Law of Succession Act*. That jurisdiction is prescribed in Section 7(1) of the Magistrates Courts Act Cap 10(Laws of Kenya). Indeed, prior to the amendments to Section 48 of the Law of Succession in the Magistrates Court Act, the jurisdiction of the magistrates pertaining succession cases was even more limited.
23. The magistrate’s court that was located in the same station with the High Court had no jurisdiction over Probate and Administration matters. The High Court had exclusive jurisdiction. The magistrate’s courts did not also have jurisdiction to revoke grants made by the said courts, and the parties had to move the High Court for that purpose.
24. This court noted that the Succession Cause subject of this dispute had been filed in the year 2012. It was clear that at the time, only the High Court had the jurisdiction to revoke grants. However, with the enactment of the Magistrates Courts Act , magistrates courts and in this regard the Chief Magistrates courts could handle succession causes up to a pecuniary limit of Kshs 20,000,000/=.
25. A perusal of the proceedings herein indicated that there was only one parcel of land in issue being Tiriki/Senende/1023 of 0.91 Ha which could not be possibly valued more than Kshs 20,000,000/= . It was thus within the pecuniary jurisdiction of the magistrate’s court.
26. Having said so, if the Applicant was aggrieved by the orders of the Trial Court, he ought to have moved the Trial Court to revoke the said Grant in issue. The other alternative was for him to appeal the order/ ruling/judgment of the Trial Court that led to the issuance of the Grant in issue.
27. Notably, Section 50 of the *Law of Succession Act* provides that:-

“ An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.”
28. As what was before this court was not an appeal, it was evident that the Objector had filed the present Summons for Revocation application in the wrong forum and the same could not be sustained herein. It had been held time and again that Article 159(2)(d) of the *Constitution* of Kenya was not meant to grant a court jurisdiction denied by a statute as in the instant case. As this court had no jurisdiction to determine the Objector’s Summons for Revocation herein, it had to down its tools.
29. In this regard, this court had two (2) options, either to strike out the Summons herein and/or to transfer the same to Hamisi Magistrate’s Court. However, the second option which was most suitable would cause more confusion as this would be a separate file from Succession Cause No 25 of 2012. As there could not be two (2) parallel files and the Summons for Revocation of Grant could only be made in the probate and administration file of the deceased’s estate, this court had no option but to strike out the said Summons for Revocation of Grant.

Disposition

30. For the foregoing reasons, the upshot of this court’s decision was that the Objector’s Summons for Revocation dated and filed on 23rd November 2011 be and is hereby struck out.
31. The Petitioner is at liberty to file the Summons for Revocation of Grant in Hamisi Succession Cause No 25 of 2012 for determination by that court.



32. As this was a family matter, this court deviated from the general rule that costs follow events so as to preserve the family ties and hereby directs that each party will bear its own costs of the said Summons for Revocation of Grant.

33. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 14TH DAY OF JULY 2025

J. KAMAU

JUDGE

