



In re Estate of Suleiman Kasuti Murunga (Miscellaneous Succession Cause E132 of 2025) [2025] KEHC 13172 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS SUCCESSION CAUSE E132 OF 2025
MS SHARIFF, J
SEPTEMBER 24, 2025**

BETWEEN

HALIMA NEKOYE MURUNGA APPLICANT

AND

ROSE POLYNE NYAMBURA RESPONDENT

RULING

1. The applicant herein filed a Summons for Revocation of Grant dated 18th June 2025 and craved for certification of her application as urgent, injunction orders restraining the respondent from initiating or continuing any legal proceedings in the name of the deceased on the strength of a limited grant ad litem issued to her in Kimilili Senior Principal Magistrates Court Succession No E006 of 2025, pending the hearing and determination of the applicant's application. The applicant also sought for revocation of the said limited grant ad litem.
2. In reaction to the said application, the Respondent filed a replying affidavit sworn by herself on 19th June 2025 and later on filed a notice of preliminary objection dated 30th June 2025, which was overruled by this court on 11th August 2025
3. The gist of the applicant's application is that Kimilili SPM Court lacked both territorial and pecuniary jurisdiction to issue the limited letters of administration ad litem and as such the letters issued on 29th January 2025 ought to be revoked.
4. The respondent on the other hand has maintained that the deceased used to reside in both Nairobi and in Kimilili wherefore the SPM Court Kimilili has the territorial jurisdiction to handle any Succession Cause involving the estate of the deceased as the respondent had the option of filing the Cause either in Nairobi or in Kimilili and that the other determinant factor is the location of the properties that constitute the estate of the deceased.



5. As regards the pecuniary jurisdiction, the respondent posits that the applicant has not adduced any proof of the value of the estate of the deceased by way of valuation reports and that she cannot base the value of the estate of the deceased on the property that is the subject matter in Nairobi ELC Case No E048 of 2025 as the said property was disposed off by the deceased during his life time and that the same does not form part of the estate of the deceased.

Analysis and determination

6. This application was canvassed by way of written submissions. Whereas on 11. 8.2025 the respondent's counsel then successfully craved for leave to file supplementary submissions to the summons for revocation of grant, none were filed.
7. This court has duly considered the rival submissions of the parties and the issue that arises for determination is whether the limited letters of administration ad litem issued on 29.1.2025 by the Senior Principal Magistrate court Kimilili ought to be revoked.
8. The operative section 76 of the *Law of Succession Act* makes provision for revocation or annulment of grant thus:-

“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.”
9. It is indeed factually and legally true that the Magistrates Courts have, courtesy of the provisions of section 23 of the *Magistrates' Courts Act* 2015, the power to issue and to revoke grants made by



them within the jurisdiction conferred upon the Magistrates Courts by that statute. Section 23 of the Magistrates Courts Act provides as follows:

“23. Amendment of section 48 of Cap. 160 The *Law of Succession Act* (Cap. 160) is amended, by repealing section 48(1) and substituting therefor the following new subsection — (1) 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.”

10. The exercise of jurisdiction by the Magistrate Courts in succession matters is subject to each court's pecuniary jurisdiction as set out under section 7 of the Magistrates Courts Act. Section 7 (1) (b) of the Act puts the pecuniary jurisdiction of a Senior Principal Magistrate's court at a ceiling of Ksh 15 million, while section 7 (3) (f) mandates the magistrate court to hear succession matters, thus:-

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- (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)
 - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (3) A magistrate's court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law —
 - (a) land held under customary tenure;
 - (b) marriage, divorce, maintenance or dowry;
 - (c) seduction or pregnancy of an unmarried woman or girl;
 - (d) enticement of, or adultery with a married person;
 - (e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and
 - (f) intestate succession and administration of intestate estates, so far as they are not governed by any written law.”

11. The applicant herein has deposed that the value of the estate of the deceased is more than Ksh 20 million, yet the pecuniary jurisdiction of the Senior Principal Magistrate Court is Ksh 15 million. The respondent deposed in her affidavit in support of her application for letters of administration ad litem at paragraph 6 thereof that the it was imperative that she be granted letters of administration ad litem as the estate of deceased stood to the risk of losing a multi- million property. An agreement dated 4th March 2025, entered into by the respondent herein in Nairobi ELCLC E048/2025, pursuant to the limited grant of administration ad litem, has referred to payment of Ksh 14,807,127.20 to the estate of the deceased and another sum of Ksh 12,882,759.80 to a third party to settle a debt of the estate of



the deceased. Cumulatively these figures translate to a sum of Ksh 27,689,887, which is way above the pecuniary jurisdiction of Kimilili Senior Principal Magistrate Court.

12. It is trite law that jurisdiction is conferred by either statute or *the Constitution* or both. A court without jurisdiction must down it's tools. See Owners of Motor Vessel Lilian S Vs Caltex Oil (Kenya) Ltd (1989) eKLR.
13. The supervisory jurisdiction of this Court over Kimilili Senior Principal Magistrates Court is enshrined under article 165 (6) and (7) of *the constitution* of Kenya 2010 which provides that :-
14. The Senior Principal Magistrate Kimilili Court had no pecuniary jurisdiction to issue the limited grant of letters of administration ad litem to the respondent on 29.1. 2025 wherefore in exercise of the supervisory jurisdiction of this court under article 165 (6) and (7) of *the Constitution* of Kenya 2010 I hereby revoke the said limited grant of letters of administration ad litem issued Rose Polyne Nyambura in Kimilili Senior Principal Magistrate Court in Succession Miscellaneous Cause No E006 of 2025: Re Estate of Suleiman Kasuti Murunga. In any event the proceedings before the subordinate court were defective in substance for want of pecuniary jurisdiction.

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

15. Given that this is a family matter each party shall bear it's own costs.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 24TH DAY OF SEPTEMBER 2025.

M. S. SHARIFF

JUDGE

