



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Dickson Olonde - Deceased (Family Miscellaneous Application  
E006 of 2023) [2024] KEHC 5773 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5773 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
FAMILY MISCELLANEOUS APPLICATION E006 OF 2023**

**KW KIARIE, J**

**MAY 15, 2024**

**IN THE ESTATE OF DICKSON OLONDE-DECEASED**

**BETWEEN**

**JOSEPH OKUMU OLONDE ..... APPLICANT**

**AND**

**CALEB OCHIENG' OLONDE ..... 1<sup>ST</sup> RESPONDENT**

**JANE ATIENO OLONDE ..... 2<sup>ND</sup> RESPONDENT**

**RUTH AUMA OLUOCH ..... 3<sup>RD</sup> RESPONDENT**

**RODAH ADHIAMBO ADONGO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Joseph Okumu Olonde, respondent herein, moved the court through an application for a summons for revocation or annulment of the grant. The application is premised on the following grounds:
  - a. That Application for revocation or annulment of letters of administration issued to Joseph Okumu Olonde and Caleb Ochieng Olonde and confirmed on 20<sup>th</sup> December, 2021 was not done under section 76 of *Law of Succession Act* chapter 160 laws of Kenya and rule 44(1) *Probate and Administration Rules*.
  - b. There were no orders and/or directions issued by the high court in Homabay, which is the nearest to Oyugis Magistrate court, as required by the above provision directing the 2<sup>nd</sup> to 3<sup>rd</sup> respondent to file an application for revocation and or annulment at the principal magistrate court in Oyugis hence certificate of confirmation of grant issued on 6<sup>th</sup> September 2022 distributing land parcel No. Central/Kasipul/Kachien/269 is null and void.



- c. The said unlawful application for revocation was an afterthought by the respondents and well calculated scheme to disinherit the applicant having known that the applicant sold a portion of his parcel to a third party after the division between the applicant and the 1<sup>st</sup> respondent pursuant to grant confirmed on the 20<sup>th</sup> December, 2021.
  - d. The 2<sup>nd</sup> grant confirmed on the 6<sup>th</sup> September, 2022 was irregularly procured in unlawful process and the applicant was never involved in the purported consent to the mode of distribution of estate.
  - e. The Grant of letters of administration intestate for the estate of the late Dickson Olonde (deceased) issued to Joseph Okumu Olonde and Caleb Ochieng Olonde and confirmed on 20 December 2021 will remain as so issued until otherwise directed by this honourable court upon an appropriate application.
  - f. The cost of this application is to be paid by the respondent.
2. The respondents were served but did not file any response.
  3. The jurisdiction to annul or revoke a grant falls under the court that issued it in the first instance. In the case of *Musine vs Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased) (Miscellaneous Application E012 of 2022)* [2023] KEHC 20217 (KLR), the court held that the High Court can only revoke grants made by itself but not those made by magistrates. The High Court can only entertain such an application on appeal.
  4. Section 23 of the *Magistrates' Court Act* provides:

The *Law of Succession Act* is amended by repealing section 48(1) and substituting therefor the following new subsection —

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. [Emphasis added]

5. Rule 44 of the *Probate and Administration Rules*, 1980, requires applications seeking the revocation or annulment of grants to be exclusively filed in the High Court. In the case of *Turfena Anyango Owuor & another vs. Mary Akinyi Dengo* [2018] eKLR, the court noted that though Rule 44 was not amended, it is subsidiary legislation and, therefore, cannot override any of the provisions of the Magistrates' Court Act. This was referring to section 23 of the *Magistrates' Court Act*.

Therefore, I do not have jurisdiction to entertain the current application. In the case of Owners of the *Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* [1989] KLR 1, the court of appeal (Nyarangi JA) held as follows:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 continuing proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.



5. The application is therefore dismissed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 15<sup>TH</sup> DAY OF MAY 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

