



REPUBLIC OF KENYA



**Thuranira v Munene (Civil Appeal E150 of 2021)
[2024] KEHC 5549 (KLR) (8 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5549 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E150 OF 2021**

EM MURIITHI, J

MAY 8, 2024

BETWEEN

MWENDA THURANIRA APPELLANT

AND

EDITH KAJUJU MUNENE RESPONDENT

JUDGMENT

1. On 6/6/2019, the Respondent (the Petitioner in the lower court) filed summons for confirmation of grant where she made a proposal at paragraph 5 of her affidavit in support of the summons for confirmation of the grant on how the estate properties were to be distributed to the beneficiaries. The Respondent swore a further supporting affidavit on 18/7/2019 proposing a different mode of distribution.
2. On 20/6/2019, the Appellant (the Objector in the lower court) filed a replying affidavit protesting the Respondent's mode of distribution and made his own proposal at paragraph 11 thereof of how the estate properties ought to be distributed.
3. Upon full hearing, the trial court distributed the estate properties as proposed by the Respondent at paragraph 22 of her further supporting affidavit sworn on 18/7/2019.

The Appeal

4. On appeal, the Appellant filed his memorandum of appeal on 28/10/2021 raising 8 grounds as follows:
 1. The learned Trial Magistrate erred in law and fact in disregarding the pecuniary jurisdiction of the court even after ordering a valuation report be filed to determine the value of the estate.
 2. The learned Trial Magistrate erred and misdirected himself in disregarding the admission to forgery by the Petitioner which tainted the whole process from the beginning. The affidavits by the beneficiaries who are purportedly abroad were not notarized and therefore inadmissible.



3. The learned Trial Magistrate erred in law and fact in not calling the beneficiaries of the estate to the court for confirmation of the grant.
4. The learned Trial Magistrate erred in law and fact in wholly disregarding or failing to accord due and proper consideration upon the Appellant's written submissions and the cases cited.
5. The learned Trial Magistrate erred in law and fact by relying on authorities which were not relevant in the circumstances thus arriving at an award which was erroneous.
6. The learned Trial Magistrate erred and misdirected himself in law in distributing the estate according to the Petition as filed whereas the Petitioner had since then switched tune to assert that only two of the properties were under the court's pecuniary jurisdiction after the Government Valuer's report.
7. The learned Trial Magistrate erred in law and fact in basing his findings on irrelevant issues not supported by evidence adduced or the applicable law.
8. The decision of the learned Trial Magistrate is against the weight of evidence.

Duty of the court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

Submissions to the Appeal

6. The Appellant accuses the trial court of lacking jurisdiction and impartiality in view of the valuation report by the Government Valuer. He urges that the affidavits sworn by the Respondent and the subsequent appointment and gazettement was as a result of perjury and the trial court enforced an illegality and a criminal act at that. He urges that according to section 76 of the *Law of Succession Act*, a grant of representation whether confirmed or not may at any time be revoked, and cites *Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party* (2019) eKLR and *In the Matter of the Estate of Isaac Kireru (deceased)* Nairobi Succession Cause No 1046 of 1994. He urges the court to be wary of the Respondent's intention of disinheriting the Appellant, hence she cannot be trusted with the equitable distribution of the estate. He urges that the petition at the trial court was riddled with bad faith and the trial process itself was an illegality which cannot be allowed to stand.
7. The Respondent cites *Owners of the Motor Vehicle "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) KLR 1 on jurisdiction. She accuses the Appellant of failing to report to the police of any forgery for investigation and prosecution. She urges that Nkuene/Taita/3478/122 is her matrimonial home, which the Appellant wants to demolish. She urges that she has already transferred the properties to the respective beneficiaries and title deeds issued. She urges the court to reaffirm the decision of the trial court, which was sound, just and fair.

Analysis and Determination

8. The trial court is faulted for relying on irrelevant authorities and issues. The trial court cited the case of *Estate of Godana Songoro Guyo (deceased)* (2020) eKLR where the court set out the extra ordinary circumstances a court would consider in the sharing of assets amongst the children and the spouse to include the age of the spouse and the fact that she may require constant medical attention and other basic rights.



9. This court finds that the case relied on by the trial court was relevant to the issues at hand especially here where the Respondent is said to be sickly and elderly and in frequent need of medical attention and she took loans to furnish the properties.
10. The trial court rendered thus, “Using the logic in the estate of *Godon Songoro Guyo (deceased)* (2020) eKLR, the petitioners toil, spousal sacrifice and medical requirements as she ages cannot be washed away or taken for granted.” Those are in deed relevant issues which the trial court was obligated to consider in reaching a fair determination of the matter. The fact that the court did not rely on any and/or all the authorities cited by the parties is not in itself a ground to set aside the trial court’s decision.
11. The Appellant has contended that the beneficiaries were not called during confirmation and that the Respondent admitted to having forged the Appellant’s signature. The trial court permitted the Appellant to file his affidavit of protest, which was heard by way of written submissions, and a judgment reserved. Therefore, there was no need to have the beneficiaries attend court, because this was a contested matter, whose resolution was left at the trial court’s discretion.
12. The twin issues for determination are whether the Appellant’s submissions and authorities were considered and whether the trial court had pecuniary jurisdiction to handle the cause.

Consideration of the Appellant’s submissions and authorities

13. In its impugned judgment, the trial court rendered thus, “I have considered the foregoing authority cited by the affidavits filed herein.” That case was cited by the Respondent in her submissions. The Appellant cited In the matter of the Estate of Ibrahim Hassan alias Sheikh Ibrahim Hassan (Deceased) Succession Cause No 36 of 2017 and In the matter of the Estate of Isaac Kireru Njuguna (deceased) Nairobi in succession cause No 1046 of 1994, which both relate to revocation of a grant under section 76 of the *Law of Succession Act*.
14. In this court’s respectful view, those authorities were irrelevant as the issue before the trial court was the distribution of the estate and not revocation of the grant.
15. This court finds that the trial court properly considered the Appellant’s submissions and authorities cited, their irrelevance notwithstanding.

Pecuniary Jurisdiction of the trial court

16. The court notes the letter by the Meru, Tharaka Nithi, Isiolo and Marsabit, County Director of Land Valuation dated 14/9/2020 annexing the valuation report for 5 properties of the deceased. In that report, LR No Nkuene/Taita/398/122 was valued at Kshs 7,500,000, LR No Kiirua/Ruiru/3478 was valued at Kshs 2,900,000, LR No Ntima/ Ntakira/1144 was valued at Kshs 36,160,000, LR No Ntima/Nkando/337 was valued at Kshs 12,800,000 and LR No Ruiru/Rwarera/888 was valued at Kshs 23,250,000 totaling to Kshs 82,610,000.
17. The trial court proceeded to distribute the 5 properties to the beneficiaries without addressing the crucial question whether, based on the valuation report, it had the pecuniary jurisdiction to do so.
18. Section 48 of the *Law of Succession Act* provides for the jurisdiction of magistrates as follows:

- “(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, Act (No 26 of 2015).”

19. Section 7 of the *Magistrates' Courts Act* provides for 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) fifteen million shillings, where the court is presided over by a senior principal magistrate; (c) ten million shillings, where the court is presided over by a principal magistrate; (d) seven million shillings, where the court is presided over by a senior resident magistrate; or (e) five million shillings, where the court is presided over by a resident magistrate.”

20. This court finds that the trial court erred in handling the matter when it lacked the pecuniary jurisdiction to distribute the estate.

Orders

21. Accordingly, for the reasons set out above, this court finds that the appeal has merit and it is allowed and the Court makes the following orders:

1. The Judgment/decree of the Hon. Evans Mbicha, Principal Magistrate dated 29th September 2021 is set aside.
2. The Respondent's Petition before the trial court is struck out with costs to the appellant.
3. The Respondent shall pay to the appellant the costs on the appeal.

Order accordingly.

DATED AND DELIVERED THIS 8TH DAY OF MAY, 2024.

EDWARD M. MURIITHI

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JUDGE

I certify that this is a true ycopy of the original

Signed

DEPUTY REGISTRAR

Appearances

M/S Kaimenyi Mose & Co. Advocates for the Appellant.

M/S Maitai Rimita & Co. Advocates for the Respondent.

