



REPUBLIC OF KENYA



In re Estate of Stephen Kirai Mwithimbu (Deceased) (Miscellaneous Cause E026 of 2023) [2024] KEHC 6993 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CAUSE E026 OF 2023
TW CHERERE, J
JUNE 6, 2024**

BETWEEN

FELIX MURITHI KIRAI APPLICANT

AND

VERONICA MUKWERURI KIRAI RESPONDENT

RULING

1. Veronica Mukweruri Kirai (Respondent) is the Administrator of the estate of Stephen Kirai Mwithimbu (Deceased) and Felix Murithi Kirai (Applicant) is one of the beneficiaries of the estate which is the subject matter of Meru CM Succession Cause No. E258 of 2022
2. By summons dated 01st November, 2023 supported by an affidavit sworn by the Applicant on even date, Applicant seeks orders among them:
 1. Stay of proceedings in Meru CM Succession Cause No. E258 of 2022
 2. Transfer the Cause to this court mainly on the ground that the estate is valued at over 100 million is therefore not within the jurisdiction of the magistrate's court
 3. Injunction to preserve the estate
 4. Accounts for rents collected from the estate
3. In support of the contention that the magistrate's court does not possess pecuniary jurisdiction to determine the Cause, Applicant has filed a valuation report for one of the deceased's assets namely LR. Ntima/Igoki/5813 which report indicates that the asset is valued at KES. 30,500,000/-.
4. Respondent opposed the summons and stated that the estate is valued at KES. 19,500,000/- and faulted Applicant of forum shopping.



Analysis and Determination

5. I have considered the summons in the light of the affidavits and annexures on record and the rival submissions of the parties.
6. As can be deduced from the supporting affidavit, the main issue for determination really is whether or not the trial court has the requisite pecuniary jurisdiction to hear and determine the Cause. No doubt the determination on the issue of jurisdiction will automatically determine whether the other prayers fail or succeed.
7. In the locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal 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 a continuation of 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." (Emphasis added)
8. The meaning of jurisdiction is expounded in the writings of John Beecroft Saunders in a treatise which is no longer published headed Words and Phrases Legally defined – Volume 3: I – N and it states at page 113 the following about jurisdiction: -

"By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the Court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior Court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the Court or tribunal has been given power to determine conclusively whether the facts exist. Where a Court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given." (Emphasis added).
9. The foregoing authorities demonstrate that the issue of a court's jurisdiction to hear and determine a matter is a self-examination exercise by the very court that is seized of a matter and must be raised with that same court at the earliest opportunity.
10. Consequently, I find that if the Applicant wishes to contest the jurisdiction of the court to hear and determine the Cause, then the only avenue open to him is to challenge that jurisdiction in the same Cause and not by filing a fresh matter in the superior court as he had done.
11. The general principle governing the grant of stay of proceedings was elucidated by Ringera J. (as he then was), *In Re: Global Tours and Travels Ltd NRBHC Winding Up Cause* No. 43 of 2006 (UR) cited in *Kenya Wildlife Service v James Mutembei* MRU HCCA No. 40 of 2018 [2019] eKLR as follows:



As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

12. There is no doubt that Applicant has a right to seek protection of the law in the pending Succession Cause and any stay of those proceedings where both the Applicant and Respondent will have an opportunity to present their respective claims would be without basis and not be in the interest of justice and it is thus declined.
13. Orders of preservation of deceased’s estate similarly ought to be sought in the pending Succession Cause, before the very court that is seized of the matter.
14. Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of the law, to ensure that the ends of justice are met. This court would be acting without jurisdiction if it attempts to interfere with the trial of the pending Succession Cause.
15. In the end, I find that the orders sought in the summons dated 01st November, 2023 are without merit and they are all declined.

DELIVERED AT MERU THIS 06TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mr.Gumato for Kaberia Arimba & Co. Advocates

For the Respondent - Mr. Otieno for Gituma Otieno & Co. Advocates

