



**In re Estate of Rodah John Karisa (Deceased) (Civil Appeal
13 of 2022) [2024] KEHC 9353 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 13 OF 2022**

SM GITHINJI, J

JULY 24, 2024

IN THE MATTER OF THE ESTATE OF RODAH JOHN KARISA (DECEASED)

BETWEEN

BERNARD AMANI GARAMA 1ST APPELLANT

EVERLYN PENDO GARAMA 2ND APPELLANT

AND

JOHN GARAMA KARISA 1ST RESPONDENT

MARKSTONE KARISA GARAMA 2ND RESPONDENT

*(An Appeal from the Ruling of the Senior Principal Magistrate's Court at Kilifi in SPMC
SUCC Cause No. 104 of 2020 delivered on 1st February, 2022 by Hon. J. M. Kituku S.P.M)*

JUDGMENT

1. This is an appeal arising out of the Ruling delivered by Hon. J. M. Kituku on 1st February, 2022 in Kilifi SPMC SUCC Cause No. 104 of 2020. The Appellant listed the following grounds of appeal:
 1. That the Honourable Learned Trial Magistrate erred in law and fact in his decision by holding that title Number Majaoni/Block5A/259 is in the name of John Garama Karisa and is not part of the Estate contrary to the evidence on record.
 2. That the Learned Trial Magistrate erred in law and fact in holding that Title Number Majaoni/Block 5A/283 is not part of the estate of the deceased contrary to the evidence on record.
 3. That the Learned Trial Magistrate erred in law and fact in awarding the motor vehicle registration number KCK 286D Nissan Elgand, the drilling machine and livestock to the 1st Respondent thereby disinheriting the Appellants who are equal beneficiaries of the estate.



4. That the Learned Trial Magistrate erred in law and fact in failing to distribute the properties of the deceased equally to all the beneficiaries as is required by law.
5. That the learned trial Magistrate erred in law and fact by completely disinheriting the Appellants from the estate of their deceased mother.
2. The Appellants urged that the impugned Ruling be set aside and replaced with an order dismissing the said Ruling delivered on the 1st day of February, 2022 and a further order be made distributing all the properties of the deceased equally to all the beneficiaries of the Estate.
3. A brief background of this appeal is that the appellants and the Respondents jointly petitioned the trial court for grant of letters of administration intestate filed on 31st August, 2020. The Petitioners herein are husband and children of the deceased. The summons for confirmation of grant were objected by the 1st Respondent vide the Objectors Affidavit sworn on the 21st day of June, 2021. The 2nd Respondent in response filed a Replying affidavit sworn on the 6th day of July, 2021 where she deponed that the parties had not agreed on a mode of distribution and as such the applicant could not seek possession of any of the assets before confirmation of the grant.
4. I have carefully considered the Ruling of the trial court and the learned trial Magistrate had this to say concerning the disputed assets. Further, Parcel land Majaoni/Block/5A/259 is in the name of John Garama Karisa and does not form part of the estate. With regard to Majaoni/Block 5A/283, the court held that since the two registered owners were spouses and that the title does not indicate if it was joint proprietorship or proprietorship in common, he made a finding that it was a joint proprietorship and upon death of one, it will revert to the other. He stated as follows; -

“I therefore find Majaoni/Block 5A/283 was jointly owned by the deceased and the widower, John Garama Karisa, and is not part of the estate of the deceased as it reverted to John Garama Karisa as the surviving spouse.”
5. Parties agreed to dispose of the appeal by filing written submissions. The Appellant’s submissions were filed on 22nd January, 2024 while the Respondents filed its submissions on 18th April, 2024. I have carefully perused the record and considered the submissions and authorities cited and in my view, the only issue that arises for determination is; -
 - i. Whether this court has jurisdiction to hear and determine the issues raised in the appeal.

Disposition

6. I have considered the appeal, the affidavits and submissions by counsels. This is a succession cause relating to the estate of the deceased herein, Rodah John Karisa. This matter is at the stage of distribution of the estate and at distribution only three factors count –ascertainment of the property available for distribution, identification of the survivors and the persons beneficially entitled, and identification of the shares of each of the persons beneficially entitled. At the heart of the current dispute are the properties known as Majaoni/Block 5A/259, Majaoni/Block 5A/283 and whether the trial court’s mode of distribution disinherited the appellants. A careful analysis of the dispute reveals the issue of title and ownership.
7. The appellants have asserted that the two contested properties belonged to their late mother and the Respondent on the other hand is of the position that he sent money while working abroad that was used to acquire all the assets that are listed in the application for issuance of grant of letters of administration.



8. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal held as follows: -

“I think that 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 its stools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

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9. Having taken into account the impugned Ruling, the grounds set out in the memorandum of appeal and the submissions by both parties, I note that the Objector in the trial court was not claiming an interest as a beneficiary but he was claiming ownership as a co-owner which in my view falls within the mandate of the Environment and Land Court. Specifically, so, the grounds as set out by the appellant would subject this court to sit in a determination of title and ownership and not distribution of the estate as is mandated. Further, it is my view that the appeal has been set out to appear that the dominant issue is that of inheritance yet a close look depicts that the issue is that of ownership.

10. I am guided by the decision in the case of *Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui*, Meru Succession Cause No. 720 of 2013 held: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

11. The Law of Succession does not confer on the Succession Court the power to determine the ownership of a parcel of land in any estate. In my view, this is a preserve of the Environment and Land Court. As such, parties having a claim of ownership of land against the estate of the deceased should pursue the same at the Environment and Land Court.

12. From the foregoing, this appeal must fail and is hereby dismissed. The appellants are advised to pursue their claim in the right forum. Parties to bear own costs of this appeal.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 24TH DAY OF JULY, 2024.

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S.M. GITHINJI

JUDGE

In the Presence of; -



Mr Kahindi holding brief for Mr Mulei for the Respondent

Ms Wangu for the Appellant

