



In re Estate of the Late Stanley Mitugo Mberya (Deceased) (Miscellaneous Succession Cause E016 of 2022) [2024] KEHC 8550 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE E016 OF 2022**

LW GITARI, J

JULY 11, 2024

**IN THE MATTER OF THE ESTATE OF THE
LATE STANLEY MITUGO MBERYA (DECEASED)**

BETWEEN

JANE CIAMATI APPLICANT

AND

BETH KANINI MUGUIKA RESPONDENT

RULING

1. The applicant has filed a miscellaneous Application seeking orders that the court do order the transfer of the Marimanti Senior Resident Magistrate’s Court Succession Cause No.19/2020 to this court for the purpose of the prosecution of the summons for revocation and or annulment of grant. It also seeks for an order of inhibition to inhibit all dealings on land Parcel No. LR Tharaka /Nkondi “A”/909.
2. The summons was canvassed by way of written submissions. The applicant has urged the court to order that the grant issued in the Marimanti Succession Cause No.19/2020 be revoked. On the other hand, the respondent has urged this court to dismiss the application.
3. I have considered the application under Section 76 of the *Law of Succession Act* it is provided as follows:-

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-
- (e) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
- (f) to proceed diligently with the administration of the estate; or
- (g) 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
- (h) that the grant has become useless and inoperative through subsequent circumstances.”

4. The section has not stated that the court referred to is the court where the appeal lies. My understanding of the Section is that court referred to is the one seized of the matter either the trial court or the appellate court.

5. Section 47 of the [Law of Succession Act](#) gives jurisdiction to the magistrate to hear and determine succession matter where they have pecuniary jurisdiction. _Section 48(1) of the [Law of Succession Act](#) provides for the jurisdiction of the Magistrate’s Court. It provides:

- (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.](#)”

6. Thus, the Magistrate’s Court has jurisdiction to hear succession matters to their logical conclusion and what should go to the High Court after the determination by the magistrate’s court should go in form of an appeal and not an application. The trial court has jurisdiction to hear and determine all the matters before them and determine all the issues. The matters are then filed in the High Court in form of appeal. _Section 50(1) of the [Law of Succession Act](#) provides:-

- (j) An appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.”

7. Thus the High Court has jurisdiction to entertain appeals against orders or decrees issued in the Magistrate’s Court. I have noted that in the present application the applicant is urging the court to transfer the succession cause for the purpose of moving this court to revoke the grant. I find that revocation grant is not an appeal. It is my view that it is the trial magistrate who has jurisdiction to hear and determine the summons for revocation of grant.

8. I am aware of Rule 44 of the [Probate and Administration](#) which provides that an application for annulment or revocation of grant shall be filed in the High Court. However the rule is sub-sidiary legislation which cannot take precedence over a provision in the mother legislation contained in the Act of Parliament. Section 48 of the Law of Succession Act (supra) gives sub-ordinate courts jurisdiction to



‘entertain any application and to determine any dispute under this Act.’ The rule can therefore not unit the jurisdiction of the Magistrate’s court to entertain applications including those seeking revocation of grant. With the recent amendment to the *Law of Succession Act* which enacted Section 48 the intention of the Legislature is to give the sub-ordinate Courts jurisdiction to entertain applications under the Act as long as they have the pecuniary jurisdiction. It must always be born in mind that the legislature’s Primary Constitutional Mandate is to make laws which set the ultimate direction in all activities in state and actions of all persons. Parties are guided by the Law as laid down by the Legislature and move the court appropriately. The parties contrary to what the applicant is alleging. She has not come to court in clean hand. This court cannot hear the matter all over again. The applicant ought to have complied with Section 50 of the *Law of Succession Act* and only come to this court by way of an appeal. It is noted from the Ruling by the learned trial magistrate that the applicant was not seeking an order for revocation of grant in the trial court. The applicant has curiously not challenged the ruling of the learned magistrate but has opted to raise a new matter in this court without exhausting the options she had in the trial court. By filing a summons for revocation of grant in this court without appealing the lower court’s Ruling, she is abusing the court process.

9. In the circumstances I find that the application is not properly before this court as the applicant has not exhausted all the options open to him before the trial court. In the circumstances I order that this application be struck out.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF JULY 2024.

L.W. GITARI

JUDGE

