



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of David Joshua Wakalo (Deceased) (Miscellaneous Succession Cause E002 of 2022) [2023] KEHC 23244 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23244 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS SUCCESSION CAUSE E002 OF 2022
GMA DULU, J
OCTOBER 5, 2023
IN THE MATTER OF THE ESTATE OF DAVID JOSHUA WAKALO
(DECEASED)

IN THE MATTER OF
ANTHONY NYAMBU WAKALO PETITIONER

RULING

1. Before me is an application dated January 23, 2023 by way of Chamber Summons filed by Anthony Nyambu Wakalo under Order 51 Rule 1, 3, 4, 8, 10(1) and Section 3, 3A, 18(1) and 63(e) of the Civil Procedure Act, and Rule 49 of the Probate and Administration Rules.
2. The prayers in the application are three as follows:-
 1. That the honourable court be pleased to re-issue a fresh Grant in the name of the applicant herein and the respondents too.
 2. That this honourable court gives us a convenient date for confirmation of the Grant issued as prayed in prayer one.
 3. That the costs of this application be costs in the cause.
3. The application has grounds on the face of the Chamber Summons that the estate comprises multiple parcels of land and shares in different companies valued way above twenty million, that the Principal Magistrate Taveta lacks jurisdiction, that the family members met and decided to resolve the contentious issues, and that all contentious issues arising in the Magistrate's court were resolved.
4. The application was filed with a supporting affidavit sworn on January 23, 2023 by the applicant Anthony Nyambu Wakalo annexing a number of documents, including a copy of a consent on the mode of distribution and a ruling from the Taveta Principal Magistrate's court dated September 9, 2021 in Taveta PM Succession Cause No 5 of 2019.



5. The application is opposed through a replying affidavit sworn on February 6, 2023 by Esther Kikupi in which it is deponed that the application is ill intentioned as the court in Taveta PM Succession Cause No 05 of 2019 delivered a ruling on September 9, 2021 that that court indeed jurisdiction in the matter, and the letters of administration therein revoked on December 4, 2019, that on September 9, 2019 the court granted the applicant thirty (30) days to appeal, that the deponent of the affidavit is a stranger to the contents of paragraph 3 of the supporting affidavit herein, that the 30 days to appeal expired on October 9, 2021. Several documents were annexed to the replying affidavit.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Anthony Nyambu Wakalo the petitioner/applicant, as well as the submissions filed by Oluoch Kimori Advocates for the respondents.
7. The main issue herein is whether this court has jurisdiction to entertain and determine this application. The respondent has contended that as the Magistrate's court on September 9, 2019 granted the applicant herein thirty (30) days to appeal, the applicant cannot come to court through the present application.
8. The applicant Anthony Nyambu Wakolo on his part, in his submissions, maintains that this court should deal with this application as they had previously agreed with the other family members and that the objections only arose at confirmation of grant stage, and that a family meeting held on November 6, 2021 had resolved the issues well.
9. Indeed this is a succession matter that was filed in the Magistrate's court at Taveta as Principal Magistrate's court Succession Cause No 5 of 2019.
10. In a ruling delivered by the Taveta Magistrate's court on July 9, 2021 the Magistrate's court concluded as follows:-

“ This being a family matter each party to bear its own costs and with the grant issued on 4th December 2019 having been revoked, this file is hereby marked closed. Right of appeal 30 days.”
11. The applicant has now come to this court through the present application and has not appealed. It is also trite that jurisdiction is everything and without jurisdiction, a court of law downs its tools once it finds that it has no jurisdiction – see *“The Owners of Motor Vessel ‘Lilian S’ =Versus= Caltex Oil (K) Ltd (1989) KLR1* wherein the Court of Appeal stated as follows:-

“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.”
12. The question then is, does this court have jurisdiction to deal with the present application?
13. The jurisdiction of the High Court in probate and administration matters is conferred by Section 47 of the [Law of Succession Act](#) (Cap.160).
14. Section 48 of the Act confers jurisdiction to the Magistrate's court, subject to the pecuniary limits provided under Section 7(1) of the Magistrate's Courts Act 2015. The revocation of letters of administration herein above is contest, was done by the Magistrate's court on the ground that it did not have the monetary jurisdiction to determine the succession cause, as the value of the assets was higher than its jurisdiction.



15. The method for challenging a decision of the Magistrate’s court in succession proceedings is governed by the provisions of Section 50 of the [Law of Succession Act](#) which states as follows:-

“ 50 (1) 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.

(2) An appeal shall lie to the High Court in respect of any order or decree made by the Kadhi’s court in respect of any estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim Law, to the Court of Appeal.”

16. It follows from the above provisions of the law, in my view, that any challenge to an order or decree of the Magistrate’s court or Kadhi’s court in succession matters had to be filed herein by way of an appeal. The word used is “shall” thus it is a mandatory process that must be complied with.

17. The applicant thus adopted the wrong procedure in approaching this court through an application in the form of a Chamber Summons, to challenge the decision of the Magistrate’s court.

18. I thus find that this court has no jurisdiction to entertain and determine the application. I strike out the application dated May 23, 2022. I can only explain there for the record that since the Magistrate stated that the Magistrate’s court did not have monetary jurisdiction, then it means that succession proceedings may be commenced in the proper court with jurisdiction.

19. As this is a family matter however, I order that parties will bear their respective costs of the application.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF OCTOBER 2023 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

IN THE PRESENCE OF:-

ALFRED – COURT ASSISTANT

APPLICANT PRESENT IN PERSON

