



In re Estate of Norman Aluodo Orenge (Deceased) (Miscellaneous Succession Cause 104 of 2024) [2024] KEHC 15764 (KLR) (9 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE 104 OF 2024
RE ABURILI, J
DECEMBER 9, 2024
IN THE MATTER OF THE ESTATE OF NORMAN ALUODO ORENKO (DECEASED)**

BETWEEN

NEIGHTER ACHOLA ODHIAMBO APPLICANT

AND

PHILLIP APOLO OSULA RESPONDENT

RULING

1. This matter was initiated by way of a Miscellaneous Succession cause dated 6th December, 2024, under certificate of urgency, for revocation/annulment of the grant that had been made in Kisumu Chief Magistrate’s Court Succession Cause No. E245 of 2023 and confirmed on 30/8/2023.
2. The Summons Application was filed under urgency and although this court is writing this ruling, it has not found any urgency involved and I hereby decline to certify it as urgent.
3. The applicant/objector also prays that Succession Causes No. E245 of 2023 and E551 of 2022 be brought before this Court for consideration and determination.
4. Further prayers are that this court do restrain the respondent from dealing in any way with land parcel number Kisumu/Korando/4395.
5. The Summons for revocation of grant are supported by the affidavit sworn by the applicant who deposes to be one of the daughters of the deceased herein and that the applicant filed citation No. E324 of 2021 against her to take out letters of administration in respect of her father’s estate but that before she could do so, the respondent rushed to court before the Chief Magistrate and obtained a grant. That the applicant filed petition number E551 of 2022 only to learn that the respondent had obtained grant in Succession Cause No. 245 of 2023 wherein a grant has already been issued and confirmed on 30/8/2023.



6. The applicant deposes that the grant as issued and confirmed in the respondent's favour was obtained by concealment of material facts and that the respondent is in the process of subdividing the land and only asset of the deceased in order for him to get a portion thereof to the detriment of the beneficiaries of the estate of the deceased.
7. From the onset, it is clear that this Cause ought not to have been initiated or brought to the High Court. This is because the law on revocation of grants, made by a magistrate's court, changed in 2015, vesting jurisdiction in the magistrates' courts to revoke grants that they have power to make.
8. The *Magistrates' Courts Act*, No. 26 of 2015, which came into effect on 2nd January 2016 amended the provisions of sections 48 and 49 of the *Law of Succession Act*, Cap 160, Laws of Kenya, which provide for jurisdiction of magistrates courts in probate matters. The amendments were effected through sections 23 and 24 of the *Magistrates Courts Act* which stipulate that:

“23. The *Law of Succession Act* is amended, by repealing section 48(1) and substituting therefor the following new subsection –

“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.”

24. Section 49 of the *Law of Succession Act* is amended –

- a) by deleting the words “Resident Magistrate” and substituting therefor the words “Magistrate's Court”; and
- b) by deleting the words “one hundred thousand shillings” and substituting therefor the words “the pecuniary limits set out in section 7(1) of the Magistrates Courts Act, 2015.”

9. The old section 48(1) of the *Law of Succession Act* was amended by Act No. 26 of 2015. The old section 48(1) provided as follows:

“48(1). Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 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 one hundred thousand shillings:

Provided that for the purpose of this section in any place where both the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act ...”

10. The effect of the amendments was that the pecuniary jurisdiction of the magistrate's court was enhanced from Kshs. 100, 000.00 to a maximum of Kshs. 20, 000, 000.00. additionally, where the High



Court and the magistrate's court are situated within the same station, the High Court shall no longer enjoy exclusive jurisdiction. It shall share jurisdiction in succession causes with the magistrate's court, subject, of course, to the pecuniary ceilings and gazettelement by the Chief Justice. Finally, the exclusive jurisdiction of the High Court to determine revocation or annulment of grants under section 76 of the Law of Succession Act was taken away and the same was extended to the magistrate's court, with respect to grants of representation that such magistrate's courts would have power to make.

11. Therefore, following the amendments to section 48(1) of the Law of Succession Act, a magistrate's court currently has power to revoke a grant of representation that it has power to make in the first instance. It follows that a person who wishes to have the grant issued by the magistrate's court annulled or revoked need not approach the High Court. They simply apply before the same magistrate's court that issued the grant, and in the same Succession Cause, seeking for annulment of such grant, under section 76 of the Law of Succession Act.
12. The amendment to section 48(1) of the Law of Succession Act became effective from 2nd January 2016 when Act No. 26 of 2015 came into effect
13. That being the case, there was no necessity for the applicant, in the circumstances, to have initiated a fresh cause before this Court, for revocation of the grant made in Kisumu CM Succession cause No. E245 of 2023. The applicant herein should have simply filed the summons for revocation of grant in Kisumu CM Succession cause No. 245 OF 2023 and even sought for consolidation of that Cause with Succession Cause No. E551 of 2022 which he himself filed. He could also seek for injunctive orders against the respondent in that Cause.
14. Therefore, as the jurisdiction of this Court to revoke grants issued by the Magistrates' Court was donated to the magistrate's courts that issued the grant sought to be revoked in these proceedings brought under certificate of urgency, I hereby find that this court is devoid of jurisdiction to entertain the summons for revocation/ annulment of grant.
15. In the end, I find the summons for revocation of grant herein dated 6th December, 2024, which is not by way of an appeal is incapable of being granted as this Court is divested of the original jurisdiction to do so, since this court is not at this stage, exercising either appellate or supervisory jurisdiction under Article 165(6) and (7) of the Constitution.
16. The Summons for revocation/ annulment of grant dated 6th December, 2024 is hereby struck out with no orders as to costs.
17. Ruling to be uploaded on the Case Tracking system and the applicant's counsel to be notified forthwith.
18. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 9TH DAY OF DECEMBER, 2024

R.E. ABURILI

JUDGE

