



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT SUCCESSION CAUSE NO.521 OF 2007**

**IN THE MATTER OF ESTATE OF PHILIP KARIUKI WERU (DECEASED)**

**JEDIDA WANJIRU KAMANU.....PETITIONER/APPLICANT**

**-VERSUS-**

**JOACHIM KARIUKI MWANGI.....RESPONDENT**

**JUDGMENT**

1. The matter before me was preceded by Karatina SRM Succession Cause No.17/2005- in the matter of the Estate of Philip Kariuki Weru alias Philip Gichugi Weru (Deceased).
2. The petitioner was one Joachim Kariuki Mwangi, one of the sons of the deceased.
3. According to the chief's letter dated 22<sup>nd</sup> December 2004 to the SRM's Court, the deceased was survived by his widow Naomi Wangari Gichuhi and 10 children including the protester Jedidah Wanjiru Gichuhi. He also had land Karimukuyu/Mutathini/347 and Laikipia/Marmanet/240 among other assets.
4. The record shows by a consent dated 1<sup>st</sup> March 2005 all the beneficiaries gave their consent for the appointment of the petitioner as administrator of the Estate.
5. All the beneficiaries appeared in court on 5<sup>th</sup> September 2005, and 7<sup>th</sup> December 2005 when grant of temporary letters of administration intestate was made to the petitioner.
6. On 9<sup>th</sup> May 2007 the summons for confirmation of grant dated 22<sup>nd</sup> February 2007 was heard where being no objection the same was heard and certificate of confirmation of grant issued;

<b><u>NAME</u></b>	<b><u>DESCRIPTION OF PROPERTY</u></b>	<b><u>SHARE OF HEIRS</u></b>
1. JOACHIM KARIUKI MWANGI	L/R KIRIMUKUYU/MUTATH-INI/347	To get whole Approx.2.51 Ha
2. EPHRAIM WERU GICHUHI	L/R LAIKIPIA/MARMANET/240	To share equally
DAVID KARUME KARIUKI)		Approx.16 Ha
PETER WAMBUGU GICHUHI)		
MICHAEL MAINA KARIUKI)		
3. NAOMI WANGARI GICHUHI	SHARE IN.BARCLAYS BANK A/C	To be registered
No.xxxx Nyahururu & KCB A/C		under her name

No.xxxx Nyahururu

4. JOAKIM KARIUKI MWANGI K.F.A shares No.xxxx ) To be registered

K.C.B shares No.xxxx ) under his name.

xxxxx, xxxx and National )

Bank shares No.xxxx. East African) Breweries Ltd No.xxxx,xxxxx)

xxxx, xxxx,xxxx,xxxx)

xxxx. Tourist promotion and Kenya)

Airways.)

5. On 14<sup>th</sup> November 2007, the applicant filed the summons for revocation of grant on the grounds that:-

*1. The grant was obtained fraudulently by the making of a false statement and/or concealment from court of something material to the cause in that the value of the deceased person's estate was understated.*

*2. That the proceedings to obtain the grant were defective in substance because the grant that was purported to be confirmed was a temporary one (as ordered by the court) which is incapable of being confirmed pursuant to the provisions of the law and further because the resident magistrate lacked the jurisdiction to entertain the cause.*

*3. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant in that the petitioner indicated to the court that the deceased's person's widow **Naomi Wangari Gichuhi** was only entitled to a life interest in the estate while in fact the said widow was entitled to a specific share of the estate.*

*4. That the temporary grant issued to the respondent herein on 7<sup>th</sup> December 2005 became useless and inoperative by operation of the law, there was nothing therefore left for the court to confirm.*

6. In her supporting affidavit Jedidah deponed that the court by then had no jurisdiction over the estate because it was valued over Kshs. 100,000/- at more than Kshs.2,000,000/-; that after six months the temporary grant became inoperative, that the petitioner misled the court that the widow was only entitled to life interest of Laikipia/Marmanet/240 yet she was entitled to not less than 10 acres.

7. That there was no proper consultation in the matter. That documents were signed under duress. That though grant was 'confirmed' on 9<sup>th</sup> May 2007 the distribution had not been done on the ground by 3<sup>rd</sup> November 2007.

8. Jedidah had the authority of her 2 sisters- Lucy Muthoni Gichohi and Esther Waitiegeni Kiama to file the summons for Revocation of Grant.

9. The respondents filed a Replying Affidavit sworn on 9<sup>th</sup> November 2017 on the same date. He denied all allegations of wrong doing and contended that everything was done with the consent of every beneficiary and it was agreed on the mode of distribution that their mother had already passed away yet she would have been a key witness in this case. He urged the court to find that litigation must come to an end.

10. Parties agreed to proceed by way of written submissions.

## Issues

### **1. Whether the SRM's court had jurisdiction to hear the matter.**

11. It is argued that even though the applicants herein appeared before the learned magistrate and participated in the proceedings- it was the duty of the petitioner to seek grant of letters of administration in a court with jurisdiction or in any event parties cannot confer jurisdiction on a court. On these points the applicant relied on **Veronica Gacheri vs. Gilbert Kithinji Patrisio & Another (2017)eKLR** and **Kenya Ports Authority vs. Modern Holdings, (EA) Limited (2017) eKLR**.

12. It was also argued that the distribution of the estate was unlawful – as it was contrary to s.35 of the Law of Succession Act where the spouse would get life interest and estate devolve to the children in equal shares. That despite their signing the consent to the summons for confirmation of grant, they were not agreeable to the mode of distribution where they were left out completely.

13. For the respondent it was argued all the allegations for the revocation of the grant lacked substance. It was argued that the respondent's replying affidavit spoke the truth – that the issues here were factual and that there were no issues of law- the case law was irrelevant and the proceedings spoke for themselves.

It was also emphasized that litigation must come to an end- some of the beneficiaries had died.

### **On Jurisdiction**

14. The deceased's estate comprised of shares in 8 different companies and two parcels of land ***Kirimukuyu/Mutathini/347*** 2.51 Ha (6.20 acres) ***Laikipia/Marmanet/240*** Ha (39.54 acres). On the face of it, these assets could not have been valued at Kshs.100,000/-. The petitioner evidently misled the court as at that time s.48 of the Law of Succession Act clearly provided that the magistrate's court could only handle estates valued at Kshs. 100,000/- or less.

15. The petitioner did not dispute the values of land as given by the District Land Valuer Nyeri as at April 2003 which valued land at Kshs. 185,000/- per acre for the 6 acre piece of land, putting it way above the jurisdiction of the magistrate then.

16. The fact of concealment, whether deliberate or inadvertently, of the actual value of the estate from the magistrate brings the grant within the provision of s.76 (b) and (c) of the Laws of Succession Act.

17. By so doing, the grant was issued by a court without jurisdiction.

18. In our justice system, jurisdiction is everything. It is what gives the court the power to deal with the matters before it. It is conferred by the Constitution or by statute or both. ( See) Supreme Court ***Samuel Kamau Macharia & another Vs. KCB Ltd & 2 others***. It cannot be conferred by consent of parties or by concealment of facts. The moment it turns out that the tribunal/court had no jurisdiction then its decision becomes a nullity and the issue must of necessity be placed before a tribunal or court with jurisdiction.

19. This was the position of the Court of Appeal in ***Adero & another vs. Ulinzi Sacco Limited 1 KLR*** cited in ***KPA vs. Modern Holdings***,

*...Jurisdiction exists or does not exist ab initio.....*

*...Jurisdiction cannot be conferred by the consent of parties or assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.*

*...Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal..."at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the court itself....." See ***All Progressive Grant Alliance (APGA) Vs. Senator Christiana N.D Anyanwu & 2 others IER (2014) SC 20/2013 Supreme Court of Nigeria***.*

20. Yes, it is in the public interest that litigation does come to an end but it goes against the grains of the rule of law, and the interests of justice for a court to act without jurisdiction as subsequent orders are a nullity.

21. I am therefore persuaded that in view of the value of the estate of the deceased at the time of filing the petition, the learned magistrate did not have jurisdiction as was set out under the then s.48 of the Laws of Succession Act.

22. Having stated this, I need not go into the other issues as on this ground alone the grant issued to Joachim Kariuki Mwangi is revocable.

23. I therefore issue the following orders:

- a. The grant issued to Joachim Kariuki Mwangi is and is hereby revoked
- b. A fresh grant to issue to the joint names of the petitioner Joachim Kariuki Mwangi and the protester Jedida Wanjiru Kamanu.
- c. Each administrator is at liberty within 30 days here of to file and serve summons for confirmation of grant
- d. There are no orders as to costs.
- e. Mention on 10<sup>th</sup> of June to confirm compliance

**Dated, delivered and signed at Nyeri this 9<sup>th</sup> Day of May 2019.**

**Mumbua T. Matheka**

**Judge**

In the presence of: -

Court Assistant: Jerusha

Mr. Mugo for Mr. King'ori for applicants

AJ Kariuki for respondent (walks in as we finish reading)

Parties

Joakim Kariuki Mwangi

Robert Wainaina for Ephraim Weru

Jedidah Wanjiku

Jecinta Wangeci

Esther Waithiegeni Kiama