



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 3149 OF 2014**

**IN THE MATTER OF THE ESTATE OF MURIMI GITUCHU- (DECEASED)**

**CYRUS NDUNGU KAHURA.....APPLICANT**

**VERSUS**

**NICHOLAS KABUCHO MURIMI.....1<sup>ST</sup> RESPONDENT**

**JOHN NJENGA MURIMI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The deceased Murimi Gituchu died intestate on 7<sup>th</sup> June 2003. He had three wives: Elizabeth Njeri, Veronica Njoki and Veronica Njeri. A grant of letters of administration intestate was issued to the respondents Nicholas Kabucho Murimi and John Njenga Murimi on 27<sup>th</sup> May 2004 at the Chief Magistrate's Court at Kiambu. On 21<sup>st</sup> June 2011 the respondent filed summons before the court to have the grant confirmed. The applicant Cyrus Ndungu Kahura filed an affidavit of protest in which he challenged, among other things, the pecuniary jurisdiction of the court to hear and determine the cause. There was no dispute that under **sections 47, 48 and 49 of the Law of Succession Act (Cap. 160)** the court at Kiambu could not hear and determine a dispute over an estate whose value was in excess of Kshs.100,000/=. **Section 48 of the Act** has since been amended to increase the value to Kshs.20,000,000/= where the court is presided over by a chief magistrate. The jurisdiction has been aligned to that under **section 7(1) of the Magistrates' Courts Act No. 26 of 2015**. The Principal Magistrate at Kiambu heard the application and dismissed it for want of jurisdiction. He found that the value of the estate was in excess of Kshs.100,000/= and therefore the court did not have the jurisdiction to hear and determine it. He advised the applicant to come to the High Court to have the grant revoked.

2. On 24<sup>th</sup> November 2004 the applicant filed the present application seeking to have the grant revoked. One of the grounds was that the court that issued the grant lacked pecuniary jurisdiction; that since the value of the estate was in excess of Kshs.100,000/= the court had no power to handle the same. On this issue, the respondents' response contained in the replying affidavit by the 1<sup>st</sup> respondent sworn on 17<sup>th</sup> February 2015 (and filed on 18<sup>th</sup> February 2015) was as follows:-

**“11. THAT at the time of filing the petition the deceased's estate was never valued at all and according to us the nearest court was Kiambu Law Courts, we were not legally represented when filing the petition we appeared in person, at the time of filing the petition we were guided by a court clerk at the registry who later accepted the documents for filing, therefore we thought that the initial indicated value was in order until when the applicant challenged the jurisdiction of the trial court.”**

3. The challenge was successful, and the respondents did not appeal against the finding. It follows that the grant was made without jurisdiction, and was therefore defective in substance. It is hereby revoked with costs.

4. This matter has taken a long time to resolve. I appoint the applicant and the two respondents as joint administrators. They, or any of them, shall within 30 days file application for the confirmation of the grant. The matter shall be mentioned on **5<sup>th</sup> June 2018** to take directions.

**DATED and DELIVERED at NAIROBI this 7<sup>TH</sup> day of MAY 2018.**

**A.O. MUCHELULE**

**JUDGE**