



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

MISC. SUCCESSION APPLN. 18 OF 2018

1. TURFENA ANYANGO OWUOR

2. MUSA AHMED OWUOR.....APPLICANTS

-VERSUS-

MARY AKINYI DENGO.....PETITIONER/RESPONDENT

(Application arising from High Court Misc. Succession Cause No. 36 of 2016 and

Migori Senior Resident's Magistrates' Court Succession Cause No. 20 of 2002)

RULING

1. This is a ruling on whether a Magistrate's Court has jurisdiction to entertain an application for revocation or annulment of a grant it issued.
2. Before I deal with the issue there is need to set the record straight more so on the movement of the Court file from the lower court to this Court. In doing so I will briefly look at the background of the matter. The matter was initially instituted as **Migori Senior Resident Magistrate's Court Succession Cause No. 20 of 2002** (hereinafter referred to as '**the Cause**'). A grant was issued and subsequently confirmed on 09/03/2004.
3. In 2016 two interested parties in the estate filed for revocation of the grant in **Migori High Court Misc. Succession Cause No. 36 of 2016** (hereinafter referred to as '**the application**'). On 02/11/2016 this Court transferred the application to the Chief Magistrate's Court at Migori for hearing and determination. The application was erroneously registered as **Succession Cause No. 200 of 2016** at the Chief Magistrate's Court at Migori (hereinafter referred to as '**the new Cause**'). I say so because the proceedings in the lower court in respect to the application ought to have been undertaken in the Cause which was already in existence and not in a fresh file.
4. That being so, the new Cause was placed before **Hon. R. Odenyo**, Senior Principle Magistrate on 09/04/2018 for hearing. **Mr. Kiseru** Counsel appearing for the Applicants pointed out to the court that the court lacked jurisdiction over the matter since revocation applications were the exclusive preserve of the High Court. The court then made an order that the new Cause be placed before the High Court for a determination of the issue. The order of the court was complied with and the new Cause was placed before me where I gave a date for a ruling on the issue which ruling was to be delivered in a new High Court Miscellaneous file which was to be opened.
5. I must however point out that when the issue of jurisdiction was raised before the lower court, that court was duty-bound to hear the rival parties' submissions and rule on the issue. Any dissatisfied party would then approach the High Court on appeal. It was therefore inappropriate for the court to forward the matter to the High Court for the said determination. When the matter was irregularly placed before me I had the option of referring it back to the lower court, but in view of the age of the matter I opted to settle the issue of jurisdiction hence this ruling.
6. Turning to the issue of the jurisdiction of the magistrates in succession matters, I believe the law as amended is so clear and settled. Initially the jurisdiction of the magistrates in succession matters was provided by **Section 48(1)** of the **Law of Succession Act, Cap. 160** of the Laws of Kenya (hereinafter referred to as '**the Act**'). The said provision stated as follows: -

'Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49 of this Act, a Resident Magistrate shall have jurisdiction to entertain any application other than an application under section 76 of this Act 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.' (emphasis added).

7. In 2015 **Section 48(1)** of **the Act** was amended by the enactment of the **Magistrates' Court Act, Act No. 26 of 2015** (hereinafter referred to as '**the new Act**'). **Section 23** of **the new Act** repealed the said **Section 48(1)** of **the Act** and substituted it with the following new subsection: -

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

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.' (emphasis added).

8. The effect of the aforesaid amendment was to accord jurisdiction to the magistrates to deal with applications under **Section 76** of **the Act** which are for revocation or annulment of the grants issued by the magistrates' courts. I, therefore hold that a Magistrates' Court has jurisdiction to deal with an application for revocation or annulment of a grant it issued subject to the pecuniary jurisdiction of that court. Since the value of the estate in Form P & A 5 was disclosed as Kshs. 200,000/= the application must be determined by the lower court.

9. Before I come to the end of this ruling I must also clarify that **Rule 44** of the **Probate and Administration Rules, 1980** which requires applications seeking the revocation or annulment of grants to be exclusively filed in the High Court was not amended. However, given that the **Probate and Administration Rules, 1980** are subsidiary legislation they cannot override any of the provisions of **the Act** and as such the position remains that the Magistrates' Court have jurisdiction to deal with applications for revocation or annulment of grants issued by those courts subject to their pecuniary jurisdiction.

10. Having said so, there is need for the Rules Committee to amend **Rule 44** of the **Probate and Administration Rules, 1980**.

11. I hence order that the application be heard and determined at the Migori Chief Magistrates' Courts and this file is hereby marked as closed.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 12th day of July 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Kisera instructed by the firm of Messrs. Omonde Kisera & Co. Advocates for the Applicants.

Mary Akinyi Dengo, Petitioner in person.

Evelyne Nyauke – Court Assistant