



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC SUCC. CAUSE NO. 12 OF 2015

(FORMERLY SUCCESSION CAUSE NO. 100 OF 2008)

IN THE MATTER OF THE ESTATE OF NKURU NKURI (DECEASED)

VERONICA GACHERI.....PETITIONER/APPLICANT

- VERSUS -

GILBERT KITHINJI PATRISIO.....1ST RESPONDENT

EVANS KABURU MATI.....2ND RESPONDENT

RULING

1. This is a miscellaneous cause that involves the estate of the late **NKURU NKURI** (deceased) who died intestate in Chogoria Hospital on 9th February, 2011 resident at Kithangari. Veronica Gacheri, the applicant herein and the appointed administratrix in the estate of the said deceased person has taken out summons dated 2/10/14 for revocation and annulment of grant granted to her on 25th July, 2011 and confirmed on 22nd May 2012. The application has been made under **Section 76** of the **Law of Succession Act** and Rule 44 of P& A rules on the following grounds namely:-

- a) That the trial Magistrate lacked pecuniary jurisdiction donated by Section 48 of the Act to entertain and dispose CHUKA SENIOR RESIDENT MAGISTRATE'S COURT SUCC. CAUSE NO.159 of 2011 as the land is 9.86 acres with an estimated value of Kshs.3.94 million.*
- b) That FORMS P&A 5, P&A 11, and P&A 12 clearly indicated that the trial magistrate pecuniary jurisdiction as per Section 48 of the Act was lacking.*
- c) That the procedure followed by the magistrate to issue and confirm the grant was fundamentally and procedurally defective in substance.*
- d) That the applicant was not engaged nor involved in the proceedings leading to the issuance of the grant.*
- e) That rules 26(b) and rule 38 of the Probate and Administration rules were not invoked at the time the trial magistrate issued and confirmed the grant.*
- f) That there was collusion between the respondent and unknown persons to have the grant confirmed against her will.*

g) That the proceedings to obtain the grant were defective in substance.

h) That there was misrepresentation and concealment of material facts to the court.

i) That no steps have been taken towards distribution of the estate comprised in L.R. No. KARINGANI/WERU/1298.

2. In her supporting affidavit sworn on 23rd October, 2014, the applicant has deponed that she was "**assisted**" in petition for letters of administration by one Gitonga Nthiga, "**a surveyor**" who misled her as she later found out that the distribution of the estate was done contrary to her specific instructions. She has further added that her attempt to have the grant rectified failed when the trial court declined.

3. The applicant has deponed that she was not engaged or involved in the proceedings leading to the confirmation of grant and that she has now realized that the lower court did not have jurisdiction to entertain the matter. He has further added that there was concealment due to the fact that the beneficiaries listed including the respondent were not children to the deceased and that they benefitted more than the applicant who was the sole child of the deceased.

In her written submissions done through her learned counsel M/s IC Mugo & Co. Advocate, the Applicant has laid emphasis on the jurisdiction of the lower court in succession matters contending that the lower court acted without jurisdiction which in her view made the decisions arrived thereat null and void. It has been submitted that the powers and mandate of a Senior Resident Magistrate dealing with succession matters under **Section 48 of Law of Succession Act** was limited to estates whose value was no more than Kshs.100,000/-. The applicant has submitted that though there was amendment to that section in 2015, the lower court still lacked the requisite jurisdiction when it entertained the matter. The applicant has pointed out that the petition filed indicated that the estate was valued at Kshs.300,000/- which was beyond the jurisdiction of that court.

4. The applicant has submitted that the learned magistrate should not have entertained the matter and faulted him for lack of diligence over the value of the estate.

5. The applicant has further submitted that she was tricked by one Gitonga Nthiga "**a surveyor**" and that she did not attend court during confirmation of grant. She has pointed out at the proceedings in that court contending that the same were unclear or uncertain on her attendance and that of the other beneficiaries. This in her view demonstrated that the proceedings were defective for non compliance with rule 26(1) of P& A rules.

6. The first respondent has opposed this application through his replying affidavit, sworn on 19th October, 2016 where he has acknowledged that the deceased herein was the father of the applicant. He has further deponed that he is an interested party after having purchased a portion of the estate from the deceased before his demise. He further adds that he made further purchases from the applicant totaling up to 2.29 acres from the estate of the deceased.

7. The 1st respondent has also added that the applicant has introduced other assets in her application which were not listed initially in the scheduled of assets comprising the estate and has contended that the applicant should have moved this court for rectification of grant rather than revocation to rectify the anomaly. The 1st respondent has pointed out that it was the applicant herself who petitioned for letters of administration and moved the court for confirmation giving a list beneficiaries which included him; (the 1st respondent.)

8. The 1st respondent has further pointed out that the applicant's conduct is deliberately intended to deny him his rights pointing out an attempt by the applicant to rectify the grant where she proposed to rectify the grant and deny him his rights. The 1st respondent contends that because the lower court declined to rectify the grant as applied by the applicant, her remedy laid in an appeal rather than the present application. In his view, a petitioner who applied for a grant of representation cannot be the same person

applying for revocation contending another aggrieved interested party in the circumstances should be the one moving the court for revocation or annulment of a grant.

9. The respondent has faulted the applicant for stating that the value of the estate is Kshs.3.49 million when she swore an affidavit in Form P&A5 that the estate was worth Kshs.300,000/-. He has further pointed out that the issue of her not being involved in the proceedings was delayed with by the lower court and that the said allegations were dismissed on merit.

10. The 1st respondent has also pointed out that it is that applicant herself through her conduct who has failed to take necessary steps to implement the grant distribute the estate and that she is doing so in bad faith in order to deny him his rights.

11. I have considered this application, and the affidavit in support and the submissions made by the applicant. I have also considered the response made through the replying affidavit of the 1st respondent and the written submissions. There are a number of issues that have been brought up in the application but the primary issue for me is the jurisdiction of the lower court to entertain and determine the cause. The other issues of concealment, fraud and misrepresentations, and non disclosure of all assets comprising the estate are secondary and for the interest of judicial time, I will not go into them at this stage. It is the position of this court that the determination of the primary issue will dispose of this matter.

12. The basis of my above observation is that the question of jurisdiction in any court is a basic element granting a court the right or the mandate and authority in law to adjudicate over a dispute and make a determination. When the law vests jurisdiction to a particular court for example to entertain and determine a matter, then the court can do so but when a court lacks the jurisdiction to entertain a given matter, it simply cannot be expected to handle that matter and if it goes ahead to do so then any order or finding emanating from such entertainment (bereft of jurisdiction) is simply void and a nullity in law. It matters not if the issue (jurisdiction) was raised in that court or is raised subsequently or if the same is an afterthought or was acquiesced or was done by consent. Jurisdiction is only donated by law.

13. Now looking at the estate of the deceased in this application, it is true that at the time the petition for Letters of Administration was filed in the lower court (7th June, 2011), the pecuniary jurisdiction of the magistrates courts were Kshs.100,000/- as per the provisions of the then **Section 48** of the **Law of Succession Act** (now amended). I have perused the P&A5 in the petition launched and paragraph 6 thereof clearly indicates that the total estimated value of the estate comprised in L.R. No. KARINGANI/WERU/1298 was Kshs.300,000/- This obviously meant that the lower court lacked the jurisdiction to entertain it and should have, on noticing the same, downed its tools and advise the petitioner to come to this court.

14. The respondent has contended that a petitioner for Letters of Administration cannot move the court to revoke or annul a grant which she herself applied for. However the provisions of **Section 76** of **Law of Succession Act** provides that any interested party can move the court for revocation of a grant. A court can also on its own motion revoke or annul a grant on any of the grounds listed under the cited provisions. As I have observed above the lower court in this instance inadvertently entertained a cause without jurisdiction. That was in my view an advertent mistake on the part of the learned magistrate provisions, of **Section 76** in my view applies.

In the premises this court finds merit to invoke the provisions of **Section 76** of the **Law of Succession Act** which I hereby do to revoke the grant issued to the petitioner on 25th July 2011 and confirmed on 22nd May 2012. I also exercise my discretion under **Section 66** of the **Law of Succession Act** by issuing a fresh grant of Letters of Administration in the matter of the estate of Nkuru Nkuri to Veronica Gacheri. The petitioner shall administer the estate in accordance with the law and in view of the age of the matter, I grant her liberty to apply for confirmation of grant before the expiry of the statutory period of six months. For the interest of justice, I direct the petitioner to serve the respondents and any other interested persons in the estate with any application regarding the estate in this cause. I shall make no order as to costs for now.

Dated and delivered at Chuka this 7th June, 2017.

R.K. LIMO

JUDGE

7/6/2017

Ruling signed, dated and delivered in the open court in the presence of I.C Mugo for Applicant and Ithiga for 1st Respondent.

R.K. LIMO

JUDGE

7/6/2017