



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
SUCCESSION CAUSE NO. 337 OF 2013

**IN THE MATTER OF THE ESTATE OF EPHRAIM GITUIRIA ALIAS GATURIA KAMAU
(DECEASED)**

JULIUS NDUNE MWANIKI.....1ST APPLICANT

EMMAH WANJIKU NJOROGE.....2ND APPLICANT

VERSUS

STEPHEN MUCHURIA MWANIKI.....RESPONDENT

JUDGMENT

On 11th August, 2008, the respondent petitioned for letters of administration intestate for the estate of Ephraim Gituira who is indicated in the petition as having died on 5th September, 1980. The petition was filed in the magistrate's court at Murang'a as succession cause number 189 of 2008.

In the affidavit in support of the petition, the deceased's assets were listed as two parcels of land whose total estimated value was indicated as Kshs. 600,000/-. In the same affidavit, the petitioner is indicated as a survivor of the deceased's estate together the applicants who were respectively described as the son and the daughter in law of the deceased. Other survivors are also the deceased's daughter and daughter in law.

The grant of letters of administration intestate was made to the respondent and it was issued by the magistrate's court on 20th January, 2009. That grant was subsequently confirmed on 24th day of November, 2009 in a certificate of confirmation of grant issued by the same court on 26th November, 2009.

By a summons for revocation or annulment of grant dated 4th June, 2010, made under section 76(a) (b) and (c) of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, the applicants sought to nullify the grant mainly on the ground that the grant was obtained fraudulently by making a false statement of fact to the effect that the deceased's estate was valued at Kshs. 600,000/- when in truth it was worth more than Kshs. 2.4 Million. According to the applicants the understated value of the deceased's estate constituted an untrue allegation of fact essential in point of law to justify the grant. In their view, the proceedings to obtain the grant were thereby defective in substance more so because, under sections 48 and 49 of the Law of Succession Act, the magistrate's court had no jurisdiction to entertain the petition since the value of the estate was more than the court's monetary jurisdiction.

Counsel for the parties took directions on the summons on 10th February, 2012 in which they agreed and the court so directed that the applicant's summons would be disposed of by way of written submissions. They subsequently filed and exchanged the submissions in support of and in opposition to the summons for revocation or annulment of grant.

The only issue that this summons turns on is the question of jurisdiction of the magistrate's court in determination of matters arising out of the Law of Succession Act. The answer to this question should conclusively dispose of the summons herein.

The jurisdiction of both the magistrate's court and the High Court to determine disputes or pronounce decrees and orders in respect of any matter arising out of the Law of Succession Act, Chapter 160 of the Laws of Kenya is defined in sections 47, 48 and 49 of that Act. Section 47 of the Act gives the High Court unlimited jurisdiction in such matters; under section 48 of that Act the jurisdiction of the magistrate's court to entertain any matter under the Law of Succession Act (except for applications under section 76 which can only be made in the High court) is tied to the monetary value of a deceased person's estate. That section provides as follows:

“48. Notwithstanding any other written law which limits jurisdiction, but subject to 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.”

Since section 48 limits the jurisdiction of the magistrate's court to determine any matter in respect of an estate whose gross value does not exceed one hundred thousand shillings, was the magistrate's court in order to entertain the petition in succession cause number 189 of 2008 when the estate in issue was worth more than one hundred thousand shillings? Did the court have any authority to pronounce any order or decree and make the grant in respect of a petition for grant of letters of administration for that estate?

Going by the express provisions of section 48, the answer to the foregoing questions is in the negative. The petition in Murang'a Principal Magistrate's Court Succession Cause number 189 of 2008 was filed in court without competent jurisdiction. In the absence of the requisite jurisdiction, any step taken by the subordinate court in the proceedings of that petition including the grant of letters of administration was void *ab initio* and of no legal consequence. It follows that the grant of letters of administration made to the respondent and issued by the magistrate's court on 20th January, 2009 is a nullity and is therefore revoked or annulled. By the same token the certificate of confirmation of the grant made on the 24th day of November, 2009 issued by the same court on 26th November, 2009 is also revoked or annulled.

Counsel for the applicants sought to have the proceedings from the magistrate's court transferred to this court for, as noted, want of jurisdiction. In my humble view, a petition filed in a court without competent jurisdiction is an invalid petition at the outset and cannot be validated by a transfer to a court of competent jurisdiction. The petition was a nullity from the very beginning

This issue has arisen in several other cases before and the consistent answer to this question appears to be that suits filed in a court without competent jurisdiction are a nullity *ab initio* and a transfer to a court of competent jurisdiction cannot cure such invalidity.

In the Nairobi High Court Miscellaneous Civil Application No. 7 of 2011, Edward Murangiri Mugambi versus Habib Bank Limited, Njagi J while referring to the Kenyan case of Omwoyo versus African Highlands & Produce Co. Ltd (2002) 1KLR 698 (the decision of Ringera J, as he

then was) and the Ugandan case of Kagenyi versus Misiramo & Another (1968) EA 48 the learned Judge had this to say on this issue;

“Where a matter is filed in a court which has no jurisdiction, then there is no suit, properly so called, which has been filed. Consequently, there is no suit, so to speak to be transferred in this instance”

By analogy, a petition or a succession cause filed in a court without jurisdiction, is an incompetent petition or succession cause and thus non-existent and therefore there is nothing to transfer from one court to another. To the extent that Murang’a Principal Magistrate’s Court Succession Cause number 189 of 2008 was filed in breach of Section 48 of the Law of Succession Act in a court without jurisdiction, that cause never existed and it is a nullity and being such a nullity there is nothing that was transferred to this court.

Dated, signed and delivered in open court this 14th day of February 2014

Ngaah Jairus

JUDGE