



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**SUCCESSION CAUSE NO. 666 OF 2013**

**IN THE MATTER OF THE ESTATE OF NGIGI CHOMBA (DECEASED)**

**RULING**

The applicant filed a petition which he titled as “*Petition for letters of administration to nominee of the petitioner under rule 14 of the fifth of the probate and administration rules.*”

In the so called petition, the applicant petitioned this court “*to issue one Esther Wanjiru Ngigi with letters of administration intestate of the estate of Ngigi Chomba as a nominee limited to applying for substitution of the petitioner in Murang’a Chief Magistrates Court Succession Cause No. 75 of 2004.*”

The basis of the petitioner’s petition is that the proposed nominee, Esther Wanjiru Ngigi is the wife of the deceased, Ngigi Chomba who in turn was the petitioner or administrator in **Murang’a Chief Magistrates Court Succession Cause No. 25 of 2004**; the deceased died before the conclusion of that succession cause in which the petitioner claims to have been listed as a beneficiary.

In his petition, the petitioner has asked this court to issue Esther Wanjiru Ngigi with the letters of administration in order that she may be substituted in place of her husband in the succession cause pending in the magistrate’s court.

The petition was supported by the affidavit of Joseph Muturi Wanyoike sworn on 10<sup>th</sup> May, 2013.

The proposed nominee opposed the application on the grounds that the petitioner himself acknowledged that the deceased was survived by sons who included her deceased husband and that any of them could be nominated to represent the estate of the deceased. As a daughter in law the proposed nominee does not think that her interests are prior to those of the deceased’s sons who, in her view, are best placed to administer the estate of their deceased father.

In any event, so argued the proposed nominee, the succession cause in which she is sought to be joined is a nullity as the court in which it is pending does not have jurisdiction to entertain it. Her nomination would therefore be rendered futile.

Parties agreed to have the “petition” disposed of by way of written submissions; I have considered those submissions and all I can gather is that counsel simply reiterated the depositions in their respective clients’ affidavits.

Annexed to the affidavit in support of the petition is a copy of the petition for letters of administration filed in the magistrate’s court at Murang’a as succession cause number 25 of 2004. Form P&A 5 in that petition shows that the value of the estate is estimated at Kshs. 200,000/=. This revelation invites this court to consider whether the petition in the magistrate’s court is before a court of competent jurisdiction before addressing the issue whether this court can order any person to be nominated for purposes of

substitution in the succession cause.

The jurisdiction of High Court and that of the magistrate's courts in matters governed by the **Law of Succession Act, Chapter 160** Laws of Kenya is set out in **Sections 47 to 50** of that Act. **Section 48** thereof defines the extent of the magistrate's jurisdiction. 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.”***

The jurisdiction of the magistrate's court to entertain an application or determine any dispute or pronounce any decree or order is monetarily capped. How far the court may exercise its jurisdiction is determined by the value of the estate in respect of which the court may be called upon to determine a dispute, pronounce a decree or an order.

Under this provision, a magistrate's court may also make a grant of representation as long as the value of the estate in respect of which a representation is made does not exceed Kshs. 100,000/-.

The jurisdiction of the magistrate to entertain an application, pronounce a decree or an order or to make a grant of representation in respect of an estate governed by the Law of Succession Act, regardless of its value, is taken away and is exclusive to the High Court where both the High Court and the magistrate's court exist at the same station.

The value of the estate which is the subject of the succession cause to which the petitioner seeks to join the proposed nominee is indicated to be Kshs. 200,000/= which, under section **48 of the Law of Succession Act**, is no doubt well beyond the jurisdiction of the magistrate's court.

That being the case, the succession cause in the magistrates court is a nullity to the extent that the magistrate's court has purported to entertain it without any lawful authority. In the case of the **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd (1989) KLR 1**. The learned judges of the Court of Appeal (**Nyarangi, Masime and Kwach JJA**, as they then were) said of the issue of jurisdiction at page 14 of their decision as follows:

***“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of the proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

The court went further to cast any doubt as to what jurisdiction in this context means and quoted a passage from **Words and Phrases Legally defined, Volume 3** at page 113 where it is stated:

***“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented before it in a formal way for its decision. The limits of this authority are imposed by statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind***

*and nature of actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of particular facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."(Underlining mine)*

There is no doubt that in view of **section 48** of the **Law of Succession Act**, the magistrates court usurped the jurisdiction which it does not have and therefore all that it is engaged in Murang'a Chief Magistrates Court Succession Cause No. 75 of 2004 is an exercise in futility. The succession cause is null from the very beginning and will not amount to any legal effect. In the premises it will not be of any use to substitute a party to proceedings that are null; this court will not make any order in vain and for this reason the petition dated 10<sup>th</sup> May, 2013 is dismissed with costs.

**Dated signed and delivered in open court this 9<sup>th</sup> day of May, 2014**

Ngaah Jairus

**JUDGE**