



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
SUCCESSION CAUSE NO. 687 OF 2011

IN THE MATTER OF THE ESTATE OF GITHIRI KARAMBA (DECEASED)

KARITA KAMAU.....APPLICANT

VERSUS

CHARITY WAMBUI GICHERU.....RESPONDENT

JUDGMENT

The applicant filed a summons for revocation of grant dated 25th August, 2011 seeking revocation or annulment of grant of letters of administration made to the respondent in respect of the estate of Githiri Karamba (deceased) who died in 1960. The grant was made in the **Murang'a Senior Principal Magistrates' Court Succession cause No. 111 of 2006** on 14th February, 2007 and confirmed on 12th October, 2007.

The summons was supported by the affidavit of the applicant sworn on 25th August 2011 and his main contention against the grant is that the respondent misled the chief who wrote the introductory letter to the court, in support of her petition, that she was the deceased's only survivor. The applicant contended that the deceased was his father and to that extent he was the only person entitled to his estate.

In answer to the applicant's contentions, the respondent explained that the deceased was her maternal grandfather; he was her mother's biological father. It was her case that she was born at the deceased's home before her mother got married to one Samson Munyambo.

The respondent deposed that her grandmother separated from her grandfather and got married to one Kamau Gathima who was the applicant's father; for this reason, so she argued, the applicant had no portion in her grandfather's inheritance and that she was better placed to lay claim on the deceased's estate.

In summary this is the case that was presented before this court.

Parties filed submissions through their counsel; I have considered these submissions alongside the petition for the grant of letters of administration that was filed in the magistrates' court.

It is not in dispute that the deceased whose estate is in issue died in 1960 and the respondent invoked the **Law of Succession Act (cap 160)** in the administration and distribution of his estate. The petition for grant of the letters of administration was undoubtedly made pursuant to **section 51** of the Act and it is apparent that it took the form prescribed in that provision of the law.

In my humble view, once the Succession Act was invoked, the respondent was bound by every provision in that Act relating to petition for grant of letters of administration intestate particularly the provisions in that Act that regulate applications for such grants. One such provision is section 48 of the Act which defines the jurisdiction of the magistrates' court in succession matters. That section provides:

“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.”

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.

Jurisdiction in determination of any issue before a court of law is such a fundamental issue that the court before which it is raised must be satisfied that it is seized of the requisite authority to determine the issue before it takes any further step in that direction (**see the decision in Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd (1989) KLR 1 (infra)**). The delineation of jurisdiction takes many forms but as far as succession matters falling under Act 160 are concerned, it is statutorily defined.

Whenever summonses, such as the applicant's, have been brought before this court for determination, my first port of call has been to interrogate whether the subordinate court acted within the bounds distinctly marked by **section 48** of the Act before I consider any other issue; the reason I have always opted for this course is that if the court acted *ultra vires* **section 48** and usurped jurisdiction which it does not have then there is no grant to be challenged and it is futile to purport to venture into the merits or lack thereof of an application to revoke or nullify a grant of letters of administration. I have chosen to take the same path in determination of the applicant's summons.

A perusal of the petition that was filed by the respondent **Murang'a Senior Principal Magistrates' Court Succession cause No. 111 of 2006** shows that the value of the deceased's estate was estimated at Kshs. 400,000/=; this is clear from form P&A 5 which is the prescribed form of affidavit in support of a petition for letters of administration intestate. With this evidence, there is no question that the extent of

the estate was beyond the jurisdiction of the magistrates' court in which it was lodged whose limit, as noted, is set out in **section 48 of the Law of Succession Act**.

Where the Act specifically defines the jurisdiction of a particular court on any particular issue that court cannot ignore the boundaries within which it is required to operate and purport to direct its attention on the merits of a particular case or what may be considered as more substantive issues. Jurisdiction goes to the competency of the court or the root of the authority of that court to determine or not determine a particular issue and it cannot be dispensed with as a procedural issue because it is not. Its gravity in decision making was put more aptly by the learned judges of the court of appeal, Nyarangi, Masime and Kwach JJA (as they then were) in the **Owners of the Motor Vessel "Lillian S" versus Caltex Oil (Kenya) Ltd (1989) KLR 1**. The learned judges said 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 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."

In the light of this decision it was incumbent upon the court in **Murang'a Senior Principal Magistrates' Court Succession cause No. 111 of 2006** to inquire into its jurisdiction, as a preliminary step, before making any order of whatever nature the least of which was to make the grant and confirm it. If the court had taken this path it would certainly have realised that in view of the value of the deceased's estate, it did not have jurisdiction to entertain the petition for grant of letters of administration.

Without going into the merits of the applicant's summons I would follow the decision of the court of

appeal in the **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd** and conclude that since the subordinate court took upon itself jurisdiction which it did not possess, the grant which it made and confirmed is a nullity ab initio. I hereby declare, the purported grant and the proceedings **in Murang’a Senior Principal Magistrates’ Court Succession cause No. 111 of 2006** out of which this grant was made a nullity. Parties will bear their own costs. It is so ordered.

Dated signed and delivered in open court this 6th day of June, 2014

Ngaah Jairus

JUDGE