

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EDORET

MISCELLANEOUS CAUSE NO. E014 OF 2024

IN THE MATTER OF THE ESTATE OF GRACE BARTONJO

WILSON RONO CHEPTINGA.....1ST APPLICANT

CYNTHIA CHEPCHUMBA CHEPTINGA.....2ND APPLICANT

VERSUS

SAMSON KANGOGO BARTONJO.....1ST RESPONDENT

ZAKAYO BARTONJO CHEPKIRWOK.....2ND RESPONDENT

RULING

1. By way of a Summons dated 17th April 2025, the Applicants seek the following orders;

1) Spent

2) The summons dated 2nd June 2023 be dismissed or struck out

3) Costs of the Summons be awarded to the Respondents

2. The application is expressed to be brought under section 47 of the Law of Succession Act. It is premised on the grounds on the face of it and the averments of Zakayo Bartonjo Chepkirwok.

3. In his affidavit, he reproduced the prayers sought in the application dated 2nd June 2023 and urged that the application ought to have been made in Eldoret Succession Cause No.E098 of 2023 and further, that the subordinate court has jurisdiction to handle the issues raised following amendments introduced in the Succession Act 2015. He deponed that the application has been improperly made to the high court and was made in ignorance of the amendments which allowed the subordinate court to deal with application for

revocation of grant. Additionally, that in the event the application made in the succession cause fails the avenue available for redress is through an appeal.

4. He urged that the application is therefore incompetent and untenable and ought to be struck out.
5. There are no responses on record by the respondents and none of the parties filed submissions.

Analysis & Determination

Whether the Magistrates' Court has jurisdiction to handle revocation of grant

6. In respect of jurisdiction, the Supreme Court in **Samuel Kamau Macharia vs. KCB and Others [2012] eKLR** has held as follows:

“ A Court’s jurisdiction flows from either the Constitution or Legislation or both. Thus, a Court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law ... the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”

7. In the celebrated case of **The Owners of the Motor Vessel “Lillian’s” -V- Caltex Oil Kenya Ltd [1989] KLR 1**, Nyarangi J.A. held 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 continuation of proceedings pending

other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”

8. In 2015 Section 48(1) of the Law of Succession Act was amended by the enactment of the Magistrates’ Court Act, Act No. 26 of 2015. 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.’

9. In the case of **Re Estate of Charles Boi (Deceased) [2020] eKLR W.M Musyoka** held as follows

“2. Let me start by stating that this cause ought not to have been initiated or brought at the High Court. I say so because the law on revocation of grants, made by a magistrate’s court, changed in 2015, to give jurisdiction to magistrates’ courts to revoke grants that they have power to make. I am talking about the Magistrates’ Courts Act, No. 26 of 2015, which commenced on 2nd January 2016. The said statute amended the provisions of the Law of Succession Act, Cap 160, Laws of Kenya, which provide for jurisdiction of magistrates’

courts in probate matters, that is to say sections 48 and 49. The changes were effected through sections 23 and 24 of the Magistrates Courts Act.

Whether the Summons dated 2nd June 2023 should be struck out or dismissed

10.In **W E Tilley (M) Limited v Peter Njuguna Mwangi 2018 KEHC 1740 (KLR)** Justice Mbogholi Msagha held as follows;

There is a difference between striking out a suit and dismissing the suit. A suit may be struck out for lack of jurisdiction, or on the basis of res judicata under Section 7 of the Civil Procedure Act or under the Limitation of Actions Act among other grounds. Invariably in all such cases, this step is taken before any evidence is adduced in the prosecution of the case. On the other hand, dismissal of a case follows the calling of evidence which may not be sufficient to prove the case.

11.Having considered the Application as well as the Statutory and Case Law as herein above summarised, I am satisfied that the Application has merit. In this regard, the same is allowed in its entirety and the Summons for Revocation dated 2nd June 2023 is now hereby struck out with costs to the Applicant.

Read Dated and Signed at ELDORET on 19th December 2025

E. OMINDE

JUDGE