

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLENEOUS NO. E005 OF 2024

IN THE MATTER OF THE ESTATE OF LUCY GATHONI

KARIUKI

**NAOMI WAMUYU KARIUKI
APPLICANT**

VERSUS

**JAMES GICHERU KARIUKI 1ST
RESPONDENT**

**ANN WANJIKU RONO 2ND
RESPONDENT**

**CHRISTOPHER TATUA MUTURI 3RD
RESPONDENT**

RULING

1. The applicant raises the question of jurisdiction of the lower court to handle this matter. It is a fairly straightforward one. Section 48(1) of the Law of Succession Act provides as follows:
 - a. 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 of the Magistrates' Courts Act.

2. Section 49 of the said act provides as follows:

The Magistrate's Court within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed the pecuniary limits set out in section 7(1) of the Magistrates' Courts Act (Cap 10), have in respect of that estate the jurisdiction conferred by section 48.

Provided that:

(i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other Magistrate's court where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;

(ii) if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;

(iii) every Magistrate's Court shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.

3. This matter was placed before the court for directions. The parties sought to record a consent, but the court declined on the grounds that such a consent must be filed in the court where the matter was determined. I was informed that the court had declined to hear the matter on the grounds that the pecuniary jurisdiction is beyond the jurisdiction of the chief magistrate.
4. The said court had concluded Nyeri CM Succession Cause Number 267 of 2016. Subsequently, Naomi Wamuyu Kariuki moved the court vide an application dated 16.10.2023 for revocation of the grant. The current value was said to be Ksh. 22,000,000/= at the time of filing and currently standing at 34,000,000/=. The value of the property in 2023 was said to be 34,000,000/= and 2016 to be 22,000,000/=. The land parcel number Naromoru/Block 2/ Muriru/11 in question measures 6.656 hectares (16.45 acres).
5. The said parcel is said to be registered in the names of Naomi Wamuyu Kariuki - 2 acres, Ann Wanjiku Rono- 2 acres, James Gicheru Kariuki - 3 acres, and Christopher Tatua Muturi - 7 acres. The registration done on 12.11.2018 was done pursuant to the grant issued herein. The suit was filed in the name of the late Lucy Gathoni Kariuki at the time of filing. The chief's letters indicated that the deceased left the following:
 - a. Harrison Nyaga Kariuki

- b. Naomi Wamuyu Kariuki
 - c. Ann Wanjiku Rono
 - d. James Gicheru Kariuki
6. Having conceded that the court below did not have jurisdiction *ab initio*, then all proceedings in the court below are a nullity. What then happens to a nullity? An order without any jurisdiction is of no legal effect; it is, in the first place, null and void. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;
- “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
7. In spite of the land being worth over 22,000,000/= then, the petitioner indicated that its value is Ksh.1,500,000/=, that is, Ksh 91,240/= per acre. The declaration is obviously false. When asked, he stated to the court that he thought the value was Ksh.1,500,000/= per acre. Using his price, the respondent’s value will lead to Ksh. 24,660,000/=. The court

thus had no jurisdiction in the first place. The court cannot assume jurisdiction by craft. In the case of **Macharia & another v Kenya Commercial Bank Ltd & 2 others** [2012] KESC 8 (KLR), the Supreme Court, [WM Mutunga, CJ, PK Tunoi, JB Ojwang, SC Wanjala & N Ndungu, SCJJ] stated as follows:

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law 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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to

prescribe the jurisdiction of such a court or tribunal by statute law.

8. The court will therefore assume jurisdiction where it has and eschew jurisdiction where none exists. Jurisdiction is everything. Without it the court has no power to take one more step. Any step taken is void not only by itself but in its effect. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** [1989] eKLR, Nyarangi JA, as he then was stated as doth;

"With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. 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 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. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority: "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 in a formal way for its decision. The limits of this authority are imposed by the 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 the 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.

9. What then does the court do with transfers effected pursuant to the grant issued by a court without jurisdiction? The transfers were given to the alleged beneficiaries, and there is no third-party transfer. Consequently, the entire gamut of transfers is set aside. They have no base to stand on.
10. In the circumstances, the grant issued in the lower court on 11.01.2017 and confirmed on 04.09.2017 is hereby revoked. Any subdivision and transfer of Land Parcel Number Naromoru/ Block 2/Muriru/11 are hereby cancelled. The county land registrar, Nyeri, is to cancel all entries and subdivisions in the register and revert the entire estate to the name of the estate of the deceased herein, the late Lucy Gathoni Kariuki.
11. The court shall appoint proper administrators other than James Gicheru Kariuki after the ruling hereof.
12. This leaves the issue of costs, which are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC**

Motors Group Limited [2018] KECA 158 (KLR) had this to say:

"It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

13. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), as follows:

18. It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it

is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

14. The applicant knew that the matter was beyond the jurisdiction of the court. Instead of filing the application in the court below, it was filed in the High Court. It is not edifying having several applications over the same issue. The court will therefore not award costs, given the parties' conduct. Each party to bear its costs.

Determination

15. In the circumstances, the court makes the following orders:
 - a. The grant issued in the lower court in Nyeri CM P&A 267 of 2016 on 11.01.2017 and confirmed on 04.09.2017 is hereby revoked.
 - b. The subdivision and subsequent transfers of land parcel number Naromoru/Block 2/Muriru/II, measuring 6.656 hectares (16.45 acres) are hereby cancelled.
 - c. The County Land Registrar, Nyeri, to cancel all entries in the register of land parcel number Naromoru/ Block 2/ Muriru/II and any subdivisions thereof and revert

the entire estate to the name of the late Lucy Gathoni Kariuki (deceased).

- d. The administrator is hereby dismissed for failure to disclose the true value of the estate.
- e. The court shall appoint proper administrators other than James Gicheru Kariuki after the ruling hereof.
- f. Nyeri CM P&A 267 of 2016 be transferred to this court. The transferred matter shall be mentioned for directions on 13/4/2026.
- g. Each party to bear its costs.

DELIVERED, DATED and SIGNED at **NYERI** on this **12th** day of **March, 2026**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. Kimondo for the Applicant

1st Respondent present

2nd Respondent in person - present

Mr. Kimunya for 3rd Respondent

Court Assistant - Michael/Martin

ORIGINAL