



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MWILU, KIAGE AND GATEMBU JJ.A)

CIVIL APPEAL NO. 111 OF 2009

BETWEEN

STANLEY MAINA MWANGI APPELLANT

VERSUS

SABINA WANJIRU MWANGI RESPONDENT

(Being an appeal from the ruling of the Honourable (Dulu, J) delivered at Nairobi on 16th April 2008

in

SUCCESSION CAUSE NO. 1723 OF 2004)

JUDGMENT OF THE COURT

1. This is an appeal from the ruling of the High Court (the Honourable Mr. Justice Dulu) delivered at Nairobi on 16th April 2008 dismissing the appellant's application for revocation or annulment of Grant of letters of administration issued to the respondent with respect to the estate of John Mwangi Njoroge, deceased.
2. The deceased died intestate on 18th March 1998. His wife, the respondent; his son, the appellant; and a second son Stephen Kinyuru Mwangi survived him. The respondent petitioned the Principal Magistrate's Court at Murang'a and was issued with the Grant of Letters of Intestate on 10th July 1998.
3. By an application dated 11th June 2004 made under section 76 of the Law of Succession Act the appellant applied for revocation of the Grant in favour of the respondent on grounds, *inter alia* that it was fraudulently obtained by making a false statement or by concealment of material facts and that it was obtained by means of untrue allegations.
4. After hearing the application, the High Court found "*no justifiable reason to revoke or annul the grant*" of letters of administration and dismissed the application. Aggrieved by that decision the appellant instituted the present appeal on the grounds that include the complaint that the Principal Magistrate's Court at Murang'a which issued the Grant of letters of administration had no jurisdiction to do so having regard to the value of the estate of the deceased which, according to

the appellant, is in excess of Kshs.10, 000,000.00.

5. At the hearing of the appeal before us the appellant appeared in person. Learned counsel Mrs. M.W. Njihia represented the respondent. Without much ado, Mrs. Njihia accepted that the value of the estate of the deceased exceeds the pecuniary jurisdiction of the magistrate’s court under the Law of Succession Act and accordingly conceded to the appeal.

6. Section 48 of the Law of Succession Act, Cap 160 Laws of Kenya provides as follows:

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

7. Section 49 of the Law of Succession Act, Cap 160 Laws of Kenya provides:

“49. The resident magistrate 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 one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48...”

8. The respondent deposed in her affidavit in support of the petition of letters of administration that the estimated value of the estate of the deceased is Kshs. 300,000.00. As already noted the appellant opines that the value of the estate exceeds Kshs. 10,000,000.00. Whichever of the two values one takes, the pecuniary jurisdiction of the Magistrate’s Court under sections 48 and 49 is exceeded. The grant of the letters of administration by a court which has no jurisdiction is incompetent. Learned counsel for the respondent was therefore right to concede the appeal. We are satisfied that a court, which had no jurisdiction to do so, issued the Grant of letters of administration.

9. We accordingly allow the appeal, set aside the ruling of the High Court dismissing the appellant’s application and substitute the same with an order annulling the Grant of Letters of Administration issued by the Principal Magistrate’s Court in favour of the respondent. Each party shall bear its own costs.

Dated and Delivered at Nairobi this 6th day of June, 2014.

P. M. MWILU

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

S. GATEMBU KAIRU

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JUDGE OF APPEAL

/ewm

I certify that this is a true copy of the original.

DEPUTY REGISTRAR