



REPUBLIC OF KENYA



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In re Estate of Barkibei Kibor (Deceased) (Miscellaneous Application E019 of 2023) [2025] KEHC 3880 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E019 OF 2023
JRA WANANDA, J
MARCH 28, 2025
IN THE MATTER OF THE ESTATE OF BARKIBEI KIBOR (DECEASED)**

BETWEEN

PETER KIPROP CHEBOS APPLICANT

AND

ISAAC KIBICHIY CHEBOS RESPONDENT

RULING

1. Before this Court for determination is the Applicant's Summons dated 3/05/2023. The same is filed through Messrs Kipkosgei Choge & Co. Advocates and the seeks prayers as follows:
 - i. The Grant of Letters of Administration Intestate made to the Respondent be revoked.
 - ii. The resultant Certificate of Confirmation of Grant therein made to the Petitioner be revoked/annulled.
 - iii. That all orders and entries entered in the register of the estate properties Nandi/Ngechek/241 and Lainguse/Leinguse Block 1(Olainguse)/5 pursuant to the Grant of Letters of Administration and the Certificate of Confirmation of Grant and the title thereof, if any, pursuant to the said Grant of Letters of Administration and the Certificate of Confirmation be cancelled by an order of this Honourable Court.
 - iv. That on revocation/annulment of the Grant of Letters and the Certificate of confirmation made to the Petitioner, fresh Grant of Letters of Administration be made to the Applicant herein and any other member of the family to be nominated by Court, save that the nominated member shall not be the Respondent.
 - v. That costs of this Application be borne by the Petitioner.



2. The Application is premised on the grounds stated on the grounds appearing on face thereof and is supported by the Affidavit sworn by the Applicant.
3. In the Affidavit, the Applicant deponed that his siblings and him are children of the deceased from the 2nd house and have occupation, possession and user of the property of the estate of the deceased known as Nandi/Ngechek/241, and that their father was also the proprietor of the parcel of land known as Lainguse/Leinguse Block 1(Olainguse)/5 situate in Uasin Gishu County.
4. He deponed further that he has looked at the copy of the register of the said Nandi/Ngechek/241 and noted that the Respondent commenced Succession Proceedings sometimes in 1990 and a title has been issued in his name as the sole proprietor after a Grant was solely confirmed in his name, and that him and his siblings, children of the deceased from the 2nd house though they have possession, occupation and use were not involved in the Petition. He urged that the said Grant and Certificate were obtained in proceedings that were defective in substance as the Respondent did not disclose that he did not include him and/or his siblings or even his own brothers and sisters, his step-brothers and sisters, and that the Respondent presented and misrepresented himself as the sole beneficiary of the estate and thus solely entitled thereto. According to him therefore, the Grant and Certificate were obtained fraudulently by the making of a false statement and that no consent accompanied the Petition and/or Confirmation of Grant and the distribution, and that therefore, the Grant was obtained by means of untrue allegation of a fact essential in point of law

Supplementary Affidavit

5. With leave of the Court sought and obtained subsequently, the Applicant then filed a Supplementary Affidavit sworn on 7/12/2023. In the Affidavit, he deponed that as regards the property known as Lainguse/Leinguse Block 1(Olainguse)/5, its estimated value is more than that of the Magistrate's Court. He deponed further that he has since learnt of the Respondent's Suit No. E002 of 2023, E&L C Case in Kapsabet which the Respondent had lodged before the Chief Magistrate's Court. He also deponed that he has also noted that no other member of the family was involved in the Petition or proceedings at all. He added that the property, Lainguse/Leinguse Block 1(Olainguse)/5 remains unadministered to date, and the Respondent, despite having petitioned and obtained a Grant of Letters of Administration and confirmation thereof, and allegedly being the title holder of one of the properties and therefore in control of the estate, has failed to produce to the Court, within the time prescribed, any Inventory or Account of Administration as is required under Section 83, that the Respondent failed, within 6 months from the date of the Grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the estate and of all dealings therewith up to the date of the account, to distribute assets after payment of expenses and debts and the income therefrom, within 6 months from the date of confirmation of the Grant, to complete the Administration of the estate and to produce to the Court a full and accurate account of the completed administration, inventory of the assets and liabilities of the estate to date. He contended that the Respondent proceeded in a manner suggesting fraudulent intents on his part and that he has also noted from the filings in Court that the Respondent has used estate assets as security for a loan with a financial institution for his own selfish benefit.

Replying Affidavit

6. In opposing the Application, the Respondent swore the Replying Affidavit sworn on 12/01/2024. He deponed that that he is the 1st born son to the deceased who died in the year 1989, that upon the death of the deceased, he successfully instituted Succession proceedings over his estate and was appointed the Administrator of the estate, and that upon the successful completion of the Succession process



- vide Eldoret Succession Cause No. 26 of 1990, he procured title deeds for estate properties which were registered in his name as agreed by the family. He deponed further that the 2nd house (Objector's family) through the elder brother filed Objection proceedings, upon hearing and determination whereof, the Court ordered that the land parcel No. Nandi/Ngechek/241 in which they reside to date be registered in the name of one Salina Chebalu Bor (now deceased), and that they appeared before the Land Control Board, signed all the transfer forms and surrendered the original title deed to Salina Chebalu Bor for purposes of effecting transfer.
7. He added that the Applicant, by himself and/or his agents, made it difficult for the said parcel of land to be transferred to his (Applicant) mother and it was later on agreed that the same be transferred to the Applicant whereupon they appeared before the Land Control Board for purposes of the transfer, and that upon the death of Salina Chebalu Bor, (Applicant's mother), his efforts to ensure that the land parcel is transferred to the Applicant and his siblings became futile due to sibling rivalry amongst them. He deponed further that the Applicant brought the instant Application after the death of his said mother, Salina Chebalu Bor, knowing very well that the issue herein had been sorted out during her lifetime, and that this action is Res Judicata as the same had been previously heard and a decision rendered vide Eldoret Succession Cause No. 26 of 1990. He contended further that the Applicant had an opportunity, upon the demise of the deceased, to sell 2 acres of the land parcel No. Lainguse/Leinguse lock 1(Olainguse)/5 to facilitate his studies and the Applicant has on several occasions engaged in activities that set to intermeddle with the estate of the deceased. In conclusion, he urged that the Applicant is not entitled to the prayers sought as he has failed to approach this Court with clean hands, and that no party shall be prejudiced if the Application is dismissed.
 8. On 8/02/2024, one Grace Aiyabei Bor, also swore an Affidavit opposing the Application. She deponed that she is the spouse of the deceased, that upon getting married, they resided in the land parcel Nandi/Ngechek/241, the deceased later on purchased land parcel Languse/Longuse Block 1 (Olanguse)/5, and that the deceased then married the said the late Salina Chebalu Bor with whom they stayed together at land parcel Nandi/Ngechek/241.
 9. He deponed further that about the year 1964, they all relocated as a family and settled at land parcel Languse/Languse Block 1 (Olanguse)/5 together with the said Salina Chebalu Bor, and in the year 1972 due to health complication of Salina Chebalu Bor and the climatic condition of the place, Salina Chebalu Bor requested to be settled at Nandi/Ngechek/241 whereupon as a family, they agreed that Salina Chebalu Bor permanently stay there with her children. She contended further that when Salina Chebalu Bor was relocated to Nandi/Ngechek/241, she was accompanied by the Respondent, Isaac Chebos, who is her (Grace Ayabei Bor) son, who worked tirelessly to ensure that the debt owed over land parcel Languse/Languse Block 1 (Olanguse)/5 was cleared and they later obtained the title deed, and in the year 1977, the Respondent relocated to the Olanguse farm where they stay together. She deponed that upon the death of the deceased in the year 1989, they agreed to distribute his properties within the houses and beneficiaries and she particularized such distribution.
 10. She further deponed that they agreed and appointed the Respondent as the Administrator and the Succession proceedings were filed, that at the time when they were distributing the estate of the deceased, the Applicant was a minor hence he could not have given a consent, but his siblings and mother did, both on their behalf and on behalf of the minors, and that both the 1st house and 2nd house appeared before the Court before the grant was confirmed. She urged the Court to take into consideration the proceedings in Eldoret Succession Cause No. 26 of 1990 before giving a determination on the issues herein, that the Administrator's efforts to transfer land parcel No. Nandi/Ngechek/241 to the Applicant's family as ordered by the Court were frustrated by the Applicant together with his siblings, and that the Applicant, while still in school, requested to dispose of 2 acres of



the Olanguage land and used the proceeds to pay his school fees which as a family they agreed. She urged the Court to dismiss the Applicant's Application as whatever was done by the Respondent was agreed by all the beneficiaries as per the wishes of the deceased. According to her, the Applicant's actions and intentions are ill-intended with the aim of depriving the rest of what is rightfully theirs.

Applicant's Further Supplementary Affidavit

11. The Applicant on 5/03/2024 filed the Further Supplementary Affidavit in which he reiterated that no Consents to the confirmation of the Grant have been produced, that he has not seen any Will by the deceased purporting to direct the manner of sharing the estate, that the mode of distribution as alleged in the Affidavits do not appear in the Certificate of Confirmation of Grant, and that in any case, the people mentioned are not beneficiaries of the estate. He urged that according to the Respondent, the shares were to be held in trust but there is no agreement or evidence to that effect and the Grant does not reflect any such Trust held by the Respondent

Notice of Preliminary Objection

12. Before directions could be taken on the hearing of the Application, the Respondent filed a Notice of Preliminary Objection. It was urged thereon that the Summons for Revocation/Annulment of grant is incompetent as this Court lacks jurisdiction to revoke the Grant issued by the lower Court by dint of the Magistrates' Court [Act No. 26 of 2015](#), that the orders sought can only be made in the parent file Eldoret PM's Succession Cause No. 26 of 1990, and that the Application nowhere identifies the Cause to be revoked.

Hearing of the Application

13. With concurrence of the parties, I directed that the Summons and the Preliminary Objection be heard and determined together, and in respect to which the parties do file Written submissions. Pursuant thereto, the Applicant filed his Submission on 24/09/2024 while the Respondent filed his on 4/10/2024.

Applicant's Submissions

14. Regarding what constitutes a "Preliminary Objection", Counsel for the Applicant cited the case of *I. N. & 5 others v Board of Management St. G. School Nairobi & Another* [2017] eKLR and also the case of *Omondi V National Bank of Kenya Ltd & Others* and urged that the challenge has not met the threshold for what comprises a "Preliminary Objection". He submitted that for a Preliminary Objection to be successful, 3 elements must be satisfied, namely, that it must raise a pure point of law; all facts pleaded by the other side should be correct and agreed upon, and there should be no facts that need to be ascertained. On the Respondent's allegation that the claim over the land was determined, he cited the case of *Moses Naula & 358 others v. Attorney General & 4 others* [2014] eKLR, and submitted that in order to determine such a question, there must be an investigation into the facts of the case, and that this therefore fails the first test. He urged further the Respondent having filed a Replying Affidavit, the Preliminary Objection also fails the second test, and on the final requirement, having said that certain facts must be ascertained in order to determine whether the Court has jurisdiction, it also fails the final test. On the issue of jurisdiction, Counsel cited the case of *Republic v Karisa Chengo & 2 Others* [2017] eKLR, the case of *Owners of the Motor Vessel "Lillian S" Caltex Oil (Kenya) Ltd* [1989] eKLR, and the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR. He also cited Article 165 (3) of [the Constitution](#), Section 47 of the [Law of Succession Act](#), and also Rules 49 and 73 of the Probate and Administration Rules.



Respondent's Submissions

15. In regard to the Preliminary Objection, Counsel for the Respondent submitted that this Court lacks the jurisdiction to revoke the grant that was issued by the lower Court by dint of the Magistrates' Court [Act No. 26 of 2015](#) and that the High Court can only revoke grants made by itself, not those made by Magistrates. He submitted that these proceedings were initiated for purposes of revoking the Grant made in Eldoret Principal Magistrate's Court Succession Case No. 26 of 1990 dated 22/5/1991, and as such, any Application for revocation of the Grant, ought to be made in the same cause. He added that this Submission is premised on the effects of the Magistrates' Court [Act No. 26 of 2015](#) in which Section 23 thereof amended Section 48(1) of the [Law of Succession Act](#) which had granted exclusive jurisdiction to the High Court to revoke grants, and extended that jurisdiction to the Magistrate's Court. He cited several authorities and urged that the High Court lost the original and exclusive jurisdiction to revoke Grants made by Magistrates and can only deal with them in exercise of its appellate jurisdiction. Counsel urged that from onset, the Application is fatally defective both in form and substance, it is a wild goose chase in the sense that it does not disclose in which Succession Cause the Grant is intended to be revoked, and the Applicant is also not certain whether the orders made in the alleged Cause have been effected.
16. Regarding substantive matters, Counsel contended that the Application does not meet the threshold set by Section 107 of the [Evidence Act](#) "that whoever alleges must prove", that the Applicant has not provided any documentary evidence but instead tactfully shifted the burden of proof to the Respondent, and upon receiving Replying Affidavits, filed a Supplementary Affidavit based on information contained therein, and which information does not support revocation of the Grant. He cited Section 76 of the [Law of Succession Act](#) and also the case of Kennedy Opiche Olela vs. William Ogida Ochuodho & Anor (2014) eKLR, in which, he urged, the Court held that it is the duty of the Applicant to prove that any of the recognized grounds has been committed before the Court can revoke a Grant, and that Applicant in this case has not proved any of the grounds. He maintained that the Respondent in his Replying Affidavit, and also that of his mother, has demonstrated the procedure that was followed in attaining the Grant, that it is evident that all family members participated in the Cause in which the decision that the land parcel Lainguse/Lainguse Block 1(Oleinguse)/5 be transferred to the Applicant's mother, to hold in trust was made, and that the Respondent has always been ready to transfer the same to the Applicant's mother. He reiterated that the Applicant was a minor whose involvement in the proceedings was unnecessary then, the allegation of fraud has thus not been established, and that what has been presented are unsubstantiated allegations.

Determination

17. The issues that arise for determination herein are evidently the following:
 - i. Whether the Objection raised herein meets the threshold of what constitutes a Preliminary Objection
 - ii. Whether this Court possesses the jurisdiction to revoke and/or annul the Grant of Letters of Administration issued by the Magistrate's Court.
 - iii. Whether the Grant should be revoked and/or annulled.
18. I now proceed to determine the said issues.



Whether the Objection raised herein meets the threshold of what constitutes a Preliminary Objection

19. Regarding the description of what a Preliminary Objection constitutes, the Supreme Court, in the case of Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others, while following the oft-cited decision of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696, restated the following:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

20. The Supreme Court, further in the case of Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR, guided the following:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

21. It is therefore evident from the foregoing that as was further held by Ojwang, J (as he then was) in the case of Oraro vs. Mbaja [2005] 1 KLR 141, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which, if argued as a preliminary point, may dispose of the action. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a plea of Res Judicata. A Preliminary Objection therefore raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct, and cannot be raised if any fact is to be ascertained, or if what is sought is the exercise of judicial discretion.

22. The objection raised herein being one of jurisdiction, it clearly is the best description of what constitutes a Preliminary Objection.

Whether this Court possesses the jurisdiction to revoke and/or annul the Grant of Letters of Administration issued by the Magistrate’s Court.

23. 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.”

24. 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.”

25. Since the jurisdiction of this Court is being challenged, the Court is obligated to establish whether it has the pre-requisite jurisdiction to entertain this matter.
26. Coming back to this matter, as correctly observed by the Respondent, a look at the Application gives the false impression that the Grant sought to be revoked was issued in this instant Miscellaneous Cause. This is because in its body, the Application does not disclose any other Succession Cause. Not even in the Supporting Affidavit is any other Succession Cause disclosed. All the Supporting Affidavit alleges is that “the Respondent commenced Succession Proceedings sometimes in 1990”. The copy of the Grant attached (not even properly exhibited as procedure requires) and dated 22/05/1991 bears the reference, Eldoret Principal Magistrate’s Court Succession Cause No. 26 of 1990. Since this instant action is a Miscellaneous Cause by nature whereof a Grant could not have been issued, the Applicant’s failure to disclose in the body of the Application, the subject Cause in issue renders the Application wholly incompetent and I would, on this ground alone, strike out the Application.
27. Nonetheless, let us assume that the Grant sought to be revoked was the one dated 22/05/1991 and issued in the said Eldoret Principal Magistrate’s Court Succession Cause No. 26 of 1990. Would this Court have the legal mandate to revoke it? In opposing the Application, the Respondent has taken the position that the Application is improperly before this Court by reason that it is the same Magistrate’s Court that issued the Grant and confirmed it that retains the jurisdiction to revoke or annul it.
28. On the issue of the High Court being asked to revoke a Grant issued by the Magistrate’s Court, I cite the following statements made by W. Musyoka J in the case of *Re Estate of Charles Boi (Deceased)* [2020] eKLR

“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.

3. The amendments stated as follows –

“23. The *Law of Succession Act* is amended, by repealing section 48(1) and substituting therefor the following new subsection –



“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.”

24. Section 49 of the *Law of Succession Act* is amended –

- a) by deleting the words “Resident Magistrate” and substituting therefor the words “Magistrate’s Court”; and
- b) by deleting the words “one hundred thousand shillings” and substituting therefor the words “the pecuniary limits set out in section 7(1) of the Magistrates Courts Act, 2015.”

4. To place the amendments in proper perspective, it would be necessary to cite the provision in the old section 48(1) of the *Law of Succession Act*, that was amended by *Act No. 26 of 2015*. The old section 48(1) read 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 ...”

5. The first effect, of the amendments, was that the pecuniary jurisdiction of the magistrate’s court was enhanced from Kshs. 100,000.00 to a maximum of Kshs. 20,000,000.00. Secondly, where the High Court and the magistrate’s court are situated within the same station, the High Court shall no longer enjoy exclusive jurisdiction, for it shall share jurisdiction in succession causes with the magistrate’s court, subject, of course, to the pecuniary ceilings and gazettment by the Chief Justice. Finally, the exclusive jurisdiction of the High Court to determine revocation applications, under section 76, was taken away, and the same was extended to the magistrate’s court, with respect to grants of representation that such magistrate’s court would have power to make.
6. This ruling is concerned with jurisdiction to revoke grants made by the magistrate’s court. Under *Act No. 26 of 2015*, by virtue of the amendment of section 48(1) of the *Law of Succession Act*, a magistrate’s court now has power



to revoke a grant of representation that it has power to make. There is now no need, for a person who wishes to have a grant made by a magistrate's court revoked, to move the High Court. All what that person needs to do is to file a summons for revocation of grant within the cause in which the grant was made by the magistrate's court.

7. Act No. 26 of 2015 commenced on 2nd January 2016, and, therefore, the amendment of section 48(1) of the Law of Succession Act, became effective from that date. The summons for revocation of grant herein, dated 3rd September 2018, was filed in this cause on 4th September 2018, that is after Act No. 26 of 2015 had commenced and the amendment of section 48(1) of the Law of Succession Act had become effective. There was no need for the applicant, in the circumstances, to have initiated a fresh cause, for revocation of the grant made in Hamisi SRMCSC No. 29 of 2016, at the High Court. She should have simply filed the summons for revocation of grant in Hamisi SRMCSC No. 29 of 2016, since the magistrate's court had, by then, been conferred with jurisdiction to revoke the grant made in Hamisi SRMCSC No. 29 of 2016.
8. The taking away of jurisdiction from the High Court, with respect to revocation of grants, made by the magistrate's court, would mean that the High Court no longer has original jurisdiction to address that issue, and that its jurisdiction, over the issue, would be as an appellate court, from a ruling of the magistrate's court, on a summons for revocation of the grant issued by that court. I have no jurisdiction, therefore, sitting as a High Court, to entertain a summons for revocation of grant, where the applicant has not filed such application at the magistrate's court in the first instance, since the Law of Succession Act, as currently framed, does not vest me with such jurisdiction. Secondly, the issue of revocation of the grant made by the magistrate's court has not been placed before me in invocation of my appellate jurisdiction.”

29. Similarly, Mrima J in the case of *Turfena Anyango Owuor & another v Mary Akinyi Dengo* [2018] eKLR, stated as follows:

- “6. Turning to the issue of the jurisdiction of the magistrates in succession matters, I believe the law as amended is so clear and settled. Initially the jurisdiction of the magistrates in succession matters was provided by Section 48(1) of the Law of Succession Act, Cap. 160 of the Laws of Kenya (hereinafter referred to as ‘the Act’). The said provision stated as follows: -

‘Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49 of this Act, a Resident Magistrate shall have jurisdiction to entertain any application other than an application under section 76 of this Act 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.’ (emphasis added).



7. In 2015 Section 48(1) of the Act was amended by the enactment of the Magistrates' Court Act, [Act No. 26 of 2015](#) (hereinafter referred to as 'the new Act'). 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](#).’ (emphasis added).

8. The effect of the aforesaid amendment was to accord jurisdiction to the magistrates to deal with applications under Section 76 of the Act which are for revocation or annulment of the grants issued by the magistrates' courts. I therefore hold that a Magistrates' Court has jurisdiction to deal with an application for revocation or annulment of a grant it issued subject to the pecuniary jurisdiction of that court. Since the value of the estate in Form P & A 5 was disclosed as Kshs. 200,000/= the application must be determined by the lower court.”

30. I fully share and associate myself with the above sentiments which have also been reiterated in numerous other authorities from the High Court. The instant Application seeks the revocation or annulment of a Grant of Letters of Administration issued and confirmed by the Magistrate's Court. I agree with the Respondent that the Application is improperly before this Court since Magistrate's Courts now possess the jurisdiction to revoke or annul Grants issued by themselves. On this issue, the High Court would only retain Appellate jurisdiction.

Final Orders

31. The upshot of my above findings is that I rule and orders as follows:
- i. The Summons for Revocation/Annulment of Grant, dated 3/05/2021, and by extension, this entire Miscellaneous Cause is hereby struck out.
 - ii. Costs of the Application are awarded to the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH 2025

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WANANDA J.R. ANURO



JUDGE

Delivered in the presence of:

N/A for Advocates for both parties

Peter Kiprop Chebos - Applicant

Court Assistant: Brian Kimathi

