



REPUBLIC OF KENYA



In re Estate of George Kinyanjui Graceson (Deceased) (Succession Appeal E005 of 2023) [2025] KEHC 5518 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION APPEAL E005 OF 2023**

PN GICHOHI, J

APRIL 30, 2025

**IN THE MATTER OF THE ESTATE OF GEORGE KINYANJUI
GRACESON (DECEASED)**

BETWEEN

FRANCIS MWANGI NJUGUNA APPELLANT

AND

NELLIE WANJIRU KINYANJUI RESPONDENT

(Being an Appeal arising from the Ruling delivered by Honorable Bildad Ochieng (CM) on 27th April, 2023 in Nakuru Succession Cause Number E461 of 2021; In the matter of the Estate of George Kinyanjui Graceson (Deceased))

JUDGMENT

1. The Appellant herein was a protestor who filed a Preliminary Objection dated 29th August, 2022 before the Chief Magistrate's Court Nakuru challenging the pecuniary jurisdiction of the Chief Magistrate to hear the Succession Cause No. E461 of 2021 on the ground that the estimated value of the Estate herein is more than Kshs. 20,000,000.
2. The Respondent opposed the Preliminary Objection and maintained that the value of the Estate is less than Kshs. 20,000,000 as indicated in the pleadings and that in fact they had initially wanted to file this cause in the High Court but pursuant to intervention by the Court Registry, they filed it in the Chief Magistrate Court.
3. After hearing both parties, Hon. Bildad Ochieng (CM), rendered his Ruling on 27th April, 2023 and held that the net value of the Estate as pleaded is Kshs. 18,000,000, which amount is within his pecuniary jurisdiction and moreover, the Respondent had not tendered a valuation report to show that the value of the Estate exceeded Kshs. 20,000,000. He noted that in any event, there is need to call



for more evidence to ascertain the value of the Estate and therefore, the issue is not a pure point of law contemplated in a Preliminary Objection. He thus dismissed the Preliminary objection for lacking in merit.

4. Dissatisfied with this finding, the Appellant lodged this Appeal vide a Memorandum of Appeal dated 24th May, 2023 and based on the following grounds: -
 1. That the learned Trial Magistrate erred in Law and fact and misdirected himself in disregarding and discrediting Schedule 1 of the Inventory of Assets and Mode of Distribution of the Estate of the Deceased annexed to the Respondent's Summons for Confirmation of Grant dated 29th June, 2022 whereof the Respondent listed the following assets:
 - i. Land Parcel Number Nyandarua/ Sabugo/8578 - Five (5) Acres.
 - ii. Land Parcel Number Nyandarua/ Sabugo/8579-One (1) Acre.
 - iii. Land Parcel Number Bahati/Engorusha Block 5/258 - 0.102 Acres.
 - iv. Land Parcel Number Nakuru Municipality Block 23/415-0.203 (5) Acres.
 - v. Britam Money Market Funds Kshs. 214,135.40 as at 17 February, 2022.
 2. That the Learned Trial Magistrate erred in Law and fact and misdirect himself in disregarding and discrediting the following paragraphs contained in the Applicant's supporting Affidavit sworn on 29th June, 2022 in support of Summons for Confirmation of Grant; -
 - i. Paragraph 8-"there is an incomplete sale of 5 Acres for Property Title Number Nyandarua/ Sabugo/8578 entered into between the Deceased and the Purchasers ...dated 4th April, 2020 for Kshs. 5,325,000/..."
 - ii. Paragraph 9-"As regards Title Number Nakuru Municipality Block 23/415 there is an incomplete sale transaction pursuant to an Agreement for sale dated 29th November, 2017 between the Deceased and the Protestor for the price of Kshs. 17,500,000/-..."
 - iii. Paragraph 10 - "Title Number Nakuru Municipality Block 23/415 is charged to National Housing Corporation (NHC). The outstanding loan balance is Kshs. 949,285.65."
 - iv. Britam Money Market Funds Kshs. 214,135.40 as at 17th February, 2022 as per Schedule 1 of the Inventory of Assets and Mode of Distribution of the Estate Deceased filed in support of the Summons for Confirmation of Grant.
 3. That the Learned Trial Magistrate erred in Law and fact and misdirected himself in disregarding and discrediting the Appellant's written submissions dated 26th September, 2022 in their entirety.
 4. That the Learned Trial Magistrate erred and misdirected himself in relying on the wrong principles of law by failing to appreciate that the Appellant had demonstrated that the value of the Estate of the Deceased was above his pecuniary jurisdiction.
 5. That the Learned Trial Magistrate erred in law and fact and misdirected himself in delivering the Ruling without notice either to the Appellant or his Advocates.
 6. That the Learned Trial Magistrate erred in law and fact and misdirected himself in fixing the Summons for Confirmation dated 29th June, 2022 for hearing on 14th June 2023, before



hearing and determining the Appellant's Protest filed vide an Affidavit sworn on 29th August, 2022 and filed in Court on 30th August, 2022.

7. That the Learned Trial Magistrate erred in Law and fact and misdirected himself in holding that the Respondent had met the threshold to warrant granting of the mandatory injunction.
5. Reasons whereof, the Appellant prayed for the following reliefs: -
 1. This Appeal be allowed and the Trial Court's Ruling together with all the consequential orders therefrom be set aside.
 2. This Honourable Court do uphold the Appellant's Preliminary Objection dated 29th August, 2022 and filed in Court on 30th August, 2022.
 3. The Respondent be condemned to pay costs of this Appeal.

Appellant's Submissions

6. The Appellant collapsed all the grounds of Appeal to one main issue, that is, whether the trial Court lacked pecuniary jurisdiction to hear and determine the cause.
7. While quoting the celebrated case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. [1989], which held that:-

“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... 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 judgement is given.”

8. The Appellant argued that the pecuniary jurisdiction of the Magistrates Court is governed by section 7(1)(a) of the Magistrate Court Act as read with section 48 (1) of the Law of Succession Act. That section 7(1)(a) of the Magistrates Court Act limits the jurisdiction of the Magistrates Court to Twenty Million where it is presided by the Chief Magistrate.
9. Accordingly, that the Assets of the Estate as listed in the applications exceed 20 million and thus no valuation is necessary to establish that fact. To support this position, reliance was placed in the case of Re Estate of Ibrahim Kimamo Munge (Deceased) [2020] KLR where Wendoh J, held: -

“The applicant has alleged that an acre cost more than Kshs.100,000/= in 2009 and since the land was over 9 acres, the SPM's court did not have jurisdiction to entertain the cause. The objector did not have the land valued because that was the surest way of ascertaining the value of the land. I do agree with the finding of Justice Gitari in the Re: Estate of Mutungi Mbutii when she said that where the value of the property is in issue, the party raising it must tender a valuation report to assist the court to determine the issue. He who alleges must prove and indeed it is the duty of the objector to prove the value of the land. However, DW1 also admitted that in 2009, an acre of land was worth Kshs.150,000/=. DW2 also stated that in 2010, he sold an acre of land at Kshs.150,000/=. If land was going for over Kshs.100,000/= in 2009 or 2010, 9 acres would have been sold for much more, that is, over Kshs.900,000/=. Although a valuation report would have been more precise, I believe that the value can be proved in other ways like by admission of the parties like in this case. I find that an admission



by DW1 and DW2, as to the value of the deceased's estate was well over Kshs.100,000/= and the PM's court that heard the matter did not have jurisdiction to determine it.”

10. In conclusion, he urged this Court to set aside the Ruling of the trial Court delivered on 27th April, 2023 and substitute with Order of this Court.

Respondent's Submissions

11. The Respondent on the other hand argued this Appeal on two issues, that is; whether the magistrate's court lacked pecuniary jurisdiction and whether the court erred in fixing the Summons for Confirmation of Grant for hearing before hearing the Appellant's protest.
12. On jurisdiction, it was submitted that the learned Magistrate was correct and justified in dismissing the Appellant's objection to the court's pecuniary jurisdiction as the same lacked merit and was only calculated to delay the succession proceedings and in effect prevent the Appellant from being evicted from a house belonging to the Estate.
13. It was argued that objection to the court's jurisdiction ought to be raised at the earliest time possible, and given the timing of the Appellant's objection in the lower court, the same lacked merit as it was brought too late in the day, and without any support by way of valuation reports presented by the Appellant hence the court was justified in dismissing the objection.
14. The Respondent argued that once the Appellant alleged the Estate exceeded Kshs. 20 Million, he ought to have proven the said assertion by tendering evidence which he failed. Furthermore, she was directed to have the succession cause filed in the lower court, and hence the Magistrate was correct in dismissing the objection on jurisdiction. To support her submissions, she cited *Re Estate of Mutugi Mbutii (Deceased) [2018] eKLR*, where the Court held: -

“The appellant despite claiming that the value of the land exceeded the jurisdiction of the subordinate court has not tendered any evidence. Where the value of the property is in issue, the party raising it must tender a valuation report to assist the court to determine the issue. This the appellant has not done. It is a principle in the law of evidence that he who alleges must prove. The appellant has not discharged the burden to prove that the value of the land exceeded Ksh.s 100,000.”
15. The Respondent therefore contended that similarly, the issue of jurisdiction raised herein was in flagrant abuse of court process reason being that the Appellant never placed any material before the lower court to prove that the value exceeded the courts' jurisdiction.
16. On whether the Court disregarded the Appellant's protest in fixing the Summons for Confirmation of Grant, the Respondent submitted that this issue is wholly misplaced and misguided as it is based on a flawed understanding of the manner in which a protest to Confirmation of Grant is heard as per the Probate Rules.
17. In the circumstances, the Respondent submitted that the Appeal lacks merit and ought to be dismissed to allow the objection to proceed alongside the Summons for Confirmation of Grant in line with Rule 40 & 41 of the Probate & Administration Rules 1980, which clearly provides that a Protest is heard at the same time as the Summons for Confirmation of Grant.



18. In further support of her arguments, the Respondent relied on Re Estate of Mathew Liluma Shinjili alias Mathew Lilimi Shinjili (Deceased) (Succession Cause 851 of 2013) [2022] KEHC 10959 (KLR), where Musyoka J succinctly elaborated on the position of Protest in succession proceedings thus: -

“Thirdly, protest proceedings have no life of their own. They are but a mere response to a summons of confirmation of grant. The affidavit of protest is the reply to the summons of confirmation of grant. Without a summons for confirmation of grant, there can be no protest proceedings. Fourthly, the affidavit of protest does not initiate protest proceedings, its effect is to turn the otherwise uncontested confirmation proceedings contentious... protest proceedings are promised for under rule 40(6) of Probate and Administration Rules. From the language of rule 40(6), it should be clear that the protest affidavit cannot stand alone, for it rides on the back of the summons for confirmation of grant. It is filed by a person who does not agree with confirmation of grant and distribution of the estate as proposed with summons for confirmation of grant.”

19. Accordingly, the Respondent urged this court to find that the entire Appeal is premature and baseless and proceed to dismiss it with costs to the Respondent.

Analysis and determination

20. The only issue for determination in this Appeal is whether the trial Court had jurisdiction to determine the succession cause before it.
21. The Appellant has correctly quoted the celebrated case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. [1989] and argued that jurisdiction is everything and without it the court must down its tools.
22. It is thus trite that jurisdiction is a fundamental issue and whenever raised either by the Court on its own motion or on application by a party it has to be determined first as in the event the court finds that it has no jurisdiction, it has to down tools. Moreover, the issue of lack of jurisdiction can have the effect of disposing of the entire suit, thus the insistence that it be of handled in the first instance.
23. Though there was no valuation report, the estimated value of Estate can be got from the pleadings and affidavits together with the annexures thereto. In this case, a perusal of the Record of Appeal reveals that in the Supporting Affidavit (P&A 5) attached to the Petition (P&A 80) filed on 14th June, 2021, Nellie Wanjiru Kinyanjui, the Administrator and the Respondent herein listed the following properties as comprising the Estate of the Deceased: -
- i. Nyandarua/Sabugo/744 (2.43 Ha) estimated at Kshs. 5,000,000.
 - ii. Bahati/Engorusha Block 5/258(0.04130 estimated at Kshs. 2,000,000.
 - iii. Nakuru Municipality Block 23/415 (0.080 Ha) estimated value at Kshs 13,000,000.
 - iv. Britam Money Market Fund (MMF)- (value is not stated).
24. The total estimated Gross value is indicated as Kshs. 20,000,000 less Liabilities being House loan with National Housing Corporation (NHC) balance of Kshs. 7,000,000 bringing the net value at Kshs. 13,000,000.
25. In the Affidavit in support of the Summons for Confirmation of Grant sworn on 29th June, 2022, the Administrator attached the mode of distribution of the Estate as Schedule 1 wherein the Britam Money Market Fund (MMF) was disclosed as Kshs. 214, 135.40 as at 17th February, 2022.



26. While determining this issue, the trial court was of the view that the net value of the Estate is Kshs. 18,000,000 which places it within its pecuniary jurisdiction.
27. With the value of the MMF fund indicated, the Appellant herein questioned jurisdiction of the Chief Magistrate Court to handle the succession cause considering that the Gross value of the Estate as per the disclosed assets exceed Kshs. 20,000,000 which was higher than the pecuniary jurisdiction of the Chief Magistrate Court.
28. In his impugned decision dismissing the Appellant's Preliminary Objection, the learned Chief Magistrate stated that though the Appellant alleged that the Estate is valued more than Kshs. 20,000,000, the Respondent indicated in her Petition for Grant of Letters of Administration that the Net Estate is valued at Kshs. 18 million hence the value of the Estate cannot be established by plain reading of the pleadings unless further evidence is tendered.
29. However, a simple arithmetic of the disclosed assets of the Estate above being; Nyandarua/Sabugo/744 (2.43 Ha) estimated at Kshs. 5,000,000, Bahati/Engorusha Block 5/258(0.04130 estimated at Kshs. 2,000,000, Nakuru Municipality Block 23/415(0.080 Ha) estimated at Kshs. 13,000,000 and Britam Money Market Fund (MMF) of Kshs. 214,135.40, brings the total Gross value to Kshs. 20,214,135.40. This value is obviously more than Kshs. 20,000,000 and thus above the pecuniary jurisdiction of the Chief Magistrate Court.
30. The issue then is whether the court should rely on the Net or Gross value of the Estate in determining its pecuniary jurisdiction. Section 7(1) (a) of the Magistrates Court Act provides that: -

“A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—(a) twenty million shillings, where the court is presided over by a chief magistrate.” (Emphasis added)
31. Further Section 7(3) (f) of the Magistrates Act give the Magistrate's powers to hear and determine intestate succession and administration of intestate estates, so far as they are not governed by any written law.
32. Further still, Section 48 of the *Law of Succession Act* provides that: -

“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 (Cap10).”(Emphasis added)
33. Pursuant to the above statutes, it is evident that in determining the pecuniary jurisdiction in respect to succession matters, the Gross value and not the Net value of the Estate is to be applied. On that basis, the trial Court erred in dismissing the Preliminary Objection basing its calculation on the Net value of the Estate.
34. Regarding timing of the Preliminary Objection, the Appellant has argued that the issue of jurisdiction was realized when the Respondent filed the Summons for Confirmation of Grant indicating the value of the Britam Money Market Fund, which caused the total assets of the Estate to surpass the Kshs. 20,000,000 and therefore, the issue of jurisdiction was raised in the earliest opportunity it arose.



35. On the other hand, Respondent's position is that the Preliminary Objection was raised late in the day as a decoy to delay the succession proceedings.

36. Though it is prudent that the issue of jurisdiction should be raised at the earliest opportunity, nothing stops a party from raising jurisdictional question even on Appeal. Indeed, the Court of Appeal reiterated this issue in Kenya Ports Authority v Modern Holdings [E.A] Limited [2017] KECA 293 (KLR), where it was held that:-

“... jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal. Though it is always prudent to raise it as soon as the occasion arises. It can be raised...at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the Court itself. Provided only that where the Court raises it suo moto, parties are to be accorded an opportunity to be heard.”

37. Consequently, it is clear, that the Succession Cause was filed before a court devoid of jurisdiction. In conclusion, the appeal is merited and allowed in the following terms: -

1. The trial court's ruling dated 27th April 2023 together with all the consequential orders be is hereby set aside.
2. The Preliminary Objection dated 29th August 2022 and filed on 30th August 2022 be and is hereby upheld.
3. Considering the circumstances of this matter, each party shall bear his own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF APRIL, 2025

PATRICIA GICHOCHI

JUDGE

In the presence of:

Mr. Njoroge h/b for Nzau for Appellant

Mr. Wanjohi for the Respondent

Ruto Court- Assistant

