



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Suleiman Kasuti Murunga (Miscellaneous Succession Cause E132 of 2025) [2025] KEHC 12015 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS SUCCESSION CAUSE E132 OF 2025**

MS SHARIFF, J

AUGUST 11, 2025

IN THE MATTER OF THE ESTATE OF SULEIMAN KASUTI MURUNGA

BETWEEN

HALIMA NEKOYE MURUNGA APPLICANT

AND

ROSE POLYNE NYAMBURA RESPONDENT

RULING

1. The applicant herein filed a Summons for Revocation of Grant dated 18th June 2025 and craved for certification of her application as urgent, injunction orders restraining the respondent from initiating or continuing any legal proceedings in the name of the deceased on the strength of a limited grant *ad litem* issued to her in Kimilili Senior Principal Magistrates Court Succession No E006 of 2025, pending the hearing and determination of the applicant's application. The applicant also sought for revocation of the said limited grant *ad litem*.
2. In reaction to the said application, the Respondent filed a replying affidavit sworn by herself on 19th June 2025 and later on filed a notice of preliminary objection dated 30th June 2025, which I outline verbatim as hereunder;
 1. That that this Honourable Court lacks the requisite original jurisdiction to hear and determine the application dated the 18th June, 2025 for revocation of a grant issued by a Magistrates Court.
 2. That the application dated the 18th June, 2025 offends the provisions of section 23 of the Magistrates Courts Act as read together with section 48 of the Law of Succession Act that ousts the original jurisdiction of this Honourable Court to revoke a grant issued by a Magistrates Court Act and the question of jurisdiction ought to have been raised at the trial court in the first



instance. reasons whereof the Respondent prays for the striking out of the application dated the 18th of June, 2025 in *limine*.

3. The preliminary objection was canvassed by way of written submissions. Parties' counsels further highlighted their respective submissions orally.

Respondent's Submissions

4. The respondent submitted on both the applicant's application and on her preliminary objection.
5. The Respondent has impugned the jurisdiction of this court to revoke a limited grant *ad litem* issued in Kimilili Senior Principal Magistrate Court Succession Cause No E006 of 2025. It is her submission that the *Magistrates' Court Act*, 2015 which came into force on 2nd January 2016, amended section 48 (1) of the *Law of Succession Act* Cap 160 Laws of Kenya, by dint of section 23 which vested jurisdiction on Magistrates Court, to revoke grants that they had the power to make. Reliance was placed in the case of *Musine vs Osamo ; Re Estate of Stephen Osamo* (2023) KEHC 20217 (KLR) 17.7.2023 (Ruling), Justice W M Musyoka, where the Judge underscored the fact that the High Court no longer has the exclusive original jurisdiction to revoke grants made by Magistrates Courts within their powers and that the High Court has to await an appeal in those instances. The case of *Re Estate of Barkibei Kibor* Misc App E019/2023 (2025) KEHC 3880 (KLR) 28.3.2025 (Ruling) was also cited wherein Justice Wananda reiterated the position taken by Justice Musyoka.
6. The respondent has further relied on judgment of Justice Mrima in *Turfena Anyango Owuor vs Mary Akinyi Dengo* (2018) eKLR, the decision of Justice Aburili in *Joseph Odera Ombayo vs Robert Ombayo Wambogo* (2019) KEHC 9282 (KLR) and the case of *David Khasievera Anusu & Others vs evans Khasievera Anusu* (2022) KEHC 1385 (KLR).
7. The Respondent urges this court to down its tools for want of jurisdiction.

Applicant's Submissions

8. The applicant on the other hand has submitted that her application for revocation of the limited grant *ad litem* is grounded on her stand that the lower court had no jurisdiction to issue the limited grant *ad litem* in the first instance. It is her position that a court devoid of jurisdiction cannot be approached to revoke a grant that it issued without jurisdiction. She maintains that is only this court that can revoke the grant issued by the lower court. She urges this court to overrule the respondent's preliminary objection.

Analysis and Determination

9. It is indeed factually and legally true that the Magistrates Courts have, courtesy of the provisions of section 23 of the *Magistrates' Courts Act* 2015, the power to revoke grants made by them within the jurisdiction conferred upon the Magistrates Courts by that statute. This is indeed the holding in all the authorities cited by the respondent. Section 23 of the *Magistrates Courts Act* provides as follows:

“

“ 23. Amendment of section 48 of Cap. 160

The *Law of Succession Act* (Cap. 160) 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.”

10. The exercise of jurisdiction by the Magistrate Courts in succession matters is subject to each court's pecuniary jurisdiction as set out under section 7 of the *Magistrates Courts Act*. Section 7 (1) (b) of the *Act* puts the pecuniary jurisdiction of a Senior Principal Magistrate's court at a ceiling of Ksh 15 million, while section 7 (3) (f) mandates the magistrate court to hear succession matters, thus:-

7.

“(1) 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)

(b) fifteen million shillings, where the court is presided over by a senior principal magistrate;

.....

(3) A Magistrate's Court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law —

(a) land held under customary tenure;

(b) marriage, divorce, maintenance or dowry;

(c) seduction or pregnancy of an unmarried woman or girl;

(d) enticement of, or adultery with a married person;

(e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and

(f) intestate succession and administration of intestate estates, so far as they are not governed by any written law.”

11. The High Court and the Magistrates Courts have powers to revoke grants under the provisions of section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya which provides as follows:-

76. Revocation or annulment of grant A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or



- (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.
12. Under Section 76 of the Law of Succession Act, lack of jurisdiction of the court that made the grant is not a provision for revocation of grant given that the Parliament did not anticipate scenarios where a court without jurisdiction will issue a grant.
 13. The applicant herein has deposed that the value of the estate of the deceased is more than Ksh 20 million, yet the pecuniary jurisdiction of the Senior Principal Magistrate Court is Ksh 15 million. The respondent deposed in her affidavit in support of her application for letters of administration *ad litem* at paragraph 6 thereof that the it was imperative that she be granted letters of administration *ad litem* as the estate of deceased stood to loose a multi- million property. An agreement dated 4th March 2025, entered into by the respondent herein pursuant to the limited grant in Nairobi ELCLC E048/2025 has referred to payment of Ksh 14,807,127.20 to the estate of the deceased and another sum of Ksh 12,882,759.80 to a third party to settle a debt of the estate of the deceased. Cumulatively these figures translate to a sum of Ksh 27,689,887, which is way above the pecuniary jurisdiction of Kimilili Senior Principal Magistrate Court.
 14. It is trite law that jurisdiction is conferred by either statute or the Constitution or both. A court without jurisdiction must down it's tools. See Owners of Motor Vessel Lilian S vs Caltex Oil (Kenya) Ltd (1989) eKLR. Given that the applicant is impugning the jurisdiction of the SPM Court Kimilili her application before this court is not misplaced. I take the position that the SPM Court Kimilili must down it's tools and the applicant is not expected, while challenging its jurisdiction, to go back to the same court.
 15. The supervisory jurisdiction of this Court over Kimilili Senior Principal Magistrates Court is enshrined under article 165 (6) and (7) of the constitution of Kenya 2010 which provides that :-
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
 17. On the balance I do hold that this Court has supervisory jurisdiction to entertain an application for revocation of a grant of letters of administration issued by a Magistrate Court which lacked jurisdiction to issue the grant.
 18. In view of the above position, I do hereby overrule the preliminary objection dated 30.6.2025 as raised by the respondent herein.
 19. Each party shall bear its own cost.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 11TH DAY OF AUGUST 2025.

MWANAISHA S SHARIFF

JUDGE



In the presence of:

N/A by Oluoch – Olunya & Associates for the Applicant

Ms Namukuru holding brief for Brian Khaemba for the Respondent

Peter Machoni - Court Clerk

