



**Madiang’i v Obwombe & another (Miscellaneous Civil Application
E002 of 2023) [2024] KEHC 2968 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CIVIL APPLICATION E002 OF 2023**

WM MUSYOKA, J

MARCH 15, 2024

BETWEEN

PHILIP MADIANG’I APPLICANT

AND

BOAZ OTIENO OBWOMBE 1ST RESPONDENT

GODFREY WANDERA ANYIMO 2ND RESPONDENT

RULING

1. The summons, dated 20th July 2023, is by the applicant. It seeks transfer of a matter pending before the Busia Chief Magistrate’s Court, being Busia CMCSC No. 557 of 2019, to the High Court, on account of pecuniary jurisdiction. The applicant avers a valuation was recently done, on the estate asset, Samia/Wakhungu-Odiado/393, and it was established to be valued at Kshs. 30,000,000.00, which took it way beyond the jurisdiction of the Chief Magistrate’s court. A copy of a valuation report, done by ADD Property Consultants, dated 18th July 2023, is attached.
2. The reply to the application is by the 2nd respondent, Godfrey Wandera Anyimo. His case is that the court had made orders on distribution of the estate, and transmission has happened, and that nothing is outstanding on the estate, to warrant the matter being transferred to the High Court. He argues that at the time the distribution was being ordered the Chief Magistrate’s court had jurisdiction.
3. The application was canvassed by way of written submissions. I note that both sides have filed their respective written submissions, which I have read through, and noted the arguments made.
4. For the purpose of determining the said application, I called for the file in Busia CMCSC No. 557 of 2019, to satisfy myself of the current status of the said matter. Article 165(6) of the *Constitution* allows the High Court to call up any file pending before a subordinate court for perusal, and Article 165(7) empowers the High Court to make any order or give any direction it considers appropriate to ensure the fair administration of justice.



5. The file in Busia CMCSC No. 557 of 2019 has been availed. I have perused it. I have noted that orders had been made on the distribution of the estate the subject of that succession cause. The initial confirmation of the grant was done *vide* orders made on 4th May 2009. Those orders were subsequently revised by orders made on 25th July 2012, by Kimaru J. The orders on distribution of 25th July 2012, were set aside, by subsequent orders made on 17th June 2015, by F. Tuiyott J, by consent of the parties, and it was directed that the revocation application, upon which the orders of 25th July 2012 had been made, was to be heard *de novo*. There was a further order for the parties to exchange proposals on modes of distribution. The revocation application has not been heard *de novo*, as ordered, and it would appear that the parties are yet to agree on, or to exchange proposals, a mode of distribution. That is the current status of the matter.
6. What I deduce from my perusal of the succession cause is that there are no orders on distribution of the estate. The initial orders of 2009 were set aside in 2012, and substituted with other orders, which were subsequently vacated in 2015. As it is, there are no subsisting orders on distribution of the estate. The revocation application that was to be heard *de novo* is yet to be heard, and the fresh modes of distribution that the court had ordered have never been exchanged. That is where the matter stands. Therefore, it is not true, what the respondents allege, that the estate was distributed, and that there was nothing outstanding.
7. I have a valuation before me, which indicates that the estate property is now valued way beyond the pecuniary jurisdiction of the Chief Magistrate's court. That has not been contested by the respondents. I understand them to say that the value was within the jurisdiction of the Chief Magistrate's court when the distribution was ordered. Well, the Chief Magistrate's court did not make any orders on distribution. That was done by the High Court, and the 2 orders, on distribution, have since been vacated. The estate awaits fresh orders on distribution. So, if the value of the estate has overshoot the pecuniary jurisdiction of the court now seized of the matter, then the cause ought to be moved back to the High Court.
8. The final order is that I do hereby allow the summons, dated 20th July 2023. Orders are hereby granted as prayed. Upon the matter being transferred to the High Court, the Deputy Registrar shall forthwith fix it for mention before me for directions. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 15TH DAY OF MARCH, 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Wakoli, instructed by Wakoli & Wakoli, Advocates for the applicant.

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the respondents.

