



THE SUPREME COURT OF KENYA
MARY JACINTA CHEPKORIR KIPTUI VS GLADYS J. KIPTIONY
PETITION NO. E025 OF 2024 AS CONSOLIDATED WITH PETITION NO. E026 OF 2024
DATE OF JUDGMENT: 23RD MAY, 2025
MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: The petition of appeal is dismissed with no orders as to costs.

Laban Kiplagat Kiptui died intestate on 24th December, 1994. He was survived by his wife, Mary Jacinta Chepkorir Kiptui, the appellant herein and her 5 children, and Gladys J. Kiptiony, the respondent, a daughter to the deceased but not with the appellant. The appellant, petitioned to the High Court for the grant of Letters of Administration for the deceased's estate in *Nakuru High Court Succession Cause No. 70 of 1995*. The grant was subsequently confirmed on 28th June, 1996. The respondent filed summons dated 5th June, 2007 seeking revocation of the grant of Letters of Administration issued to the appellant. This was on the grounds that the grant of the Letters of Administration and its confirmation was obtained without the consent of the respondent, who was at the time an adult. Further, that even after confirmation, the respondent had not received her share of the deceased's estate.

On 7th December, 2007 the High Court revoked the grant issued to the appellant and ordered that the Letters of Administration in respect of the deceased's estate be jointly issued to the appellant and the respondent. Aggrieved by the said decision, the appellant filed an application dated 18th December, 2007 seeking a revocation of the grant dated 7th December, 2007 and for the application dated 5th June 2007 to be heard *inter partes*. The appellant, through her new advocates, also filed an application dated 26th June, 2008, seeking review and setting aside of the orders of 7th December, 2007. In the course of the proceedings, the appellant's counsel, sought to have the judge disqualify herself from hearing the appellant's application dated 26th June, 2008. In a Ruling dated 6th July, 2009 the court found no proper cause disclosed for the court to disqualify itself. The court also, on its own motion, dismissed the appellant's application dated 26th June, 2008. On appeal, the Court of Appeal at Nyeri Civil Appeal No. 268 of 2009, set aside the High Court order dismissing the appellant's application dated 26th June, 2008 and remitted the matter to the High Court for hearing vide the Judgment dated 25th February, 2016.

At the close of the hearing of the remitted matter by the High Court, parties were directed to file submissions, and the appellant was directed to file and serve the statement of accounts of the deceased's estate. The matter was mentioned a number of times and it was noted that the appellant had failed to comply. The court then gave the appellant the last opportunity to render the accounts before the next date, failure to which the grant shall be revoked. When the matter was mentioned on 11th June, 2019, the appellant had not provided the statement of accounts. Consequently, the court revoked the grant pursuant to Section 76 of the Law of Succession Act.

Aggrieved, the appellant filed **Civil Appeal No. 21 of 2020** before the Court of Appeal. In a judgment dated 26th April, 2024 the Court of Appeal found that the parties were not accorded a fair hearing and the appeal was merited. The appeal was allowed with orders that: the matter be remitted back to the superior court for determination on the merits of the application dated 18th December, 2007; the matter be heard by any other judge of the High Court other than *Hon Justice A. K.*; and costs to abide the outcome of the trial.

Dissatisfied, the appellant instituted two appeals before the Supreme Court. The Court on its own motion, consolidated the two appeals. The appeal was based on several grounds, including that the learned Judges of Appeal erred in law and fact, and were in contravention of Articles 10, 25, 27, 48 and 50 of the Constitution of Kenya by: remitting the matter to the High Court for a fresh trial without setting aside the impugned decision of the High Court; distorting and misrepresenting the facts of the appeal; and directing the costs of the appeal do abide the outcome of the High Court proceedings. Upon consideration, the Supreme Court determined the single issue on whether the Court had jurisdiction to hear and determine the petition, as of right involving interpretation and application of the Constitution.

The Supreme Court found, that it lacked jurisdiction to hear the matter. The Court noted that the issue before the High Court was a succession dispute between the parties, specifically, the revocation of grant of Letters of Administration issued to the appellant. Before the Court of Appeal, the issue for determination was whether the High Court considered each rival case before it pronounced itself on the revocation of the grant confirmed on 28th June, 1996. Based on this, the Supreme Court found that there was no question on interpretation or application of the Constitution before the High Court or before the Court of Appeal, for the Court to exercise its jurisdiction under Article 163(4)(a) of the Constitution as sought. The Court's view was that the appellant ought to have moved the Court of Appeal to either confirm or clarify the import of its judgment having found merit and allowed the appeal without expressly issuing an order to set aside the High Court's order.

On the award of costs by the Court of Appeal, the Supreme Court held that the award of costs is discretionary, and further that discretionary pronouncements by the Court of Appeal fall outside the set of questions appealable to the Supreme Court. The Court therefore declined the invitation to assume jurisdiction in respect of the appeal reiterating that it is not the mere allegation in pleadings by a party that clothes an appeal with the attributes of constitutional interpretation or application but rather issues of constitutional controversy.

Noting that the respondent did not participate in the proceedings before the Supreme Court, the Court made no order as to costs.

Consequently, the Supreme Court issued the following final orders:

- i. ***Petition of Appeal No. E025 of 2024 consolidated with Petition of Appeal No. E026 of 2024 be and is hereby dismissed;***
 - ii. ***We hereby direct that the sum of Kshs 6,000/= deposited as security for costs in Petition of Appeal No. E025 of 2024 and Petition of Appeal No. E026 of 2024, respectively, be refunded to the petitioner.***
 - iii. ***There shall be no order as to costs.***
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