



In re Estate of William Kamuren Chrichir (Deceased) (Succession Cause E007 of 2023) [2023] KEHC 17743 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E007 OF 2023
RN NYAKUNDI, J
MAY 25, 2023
IN THE MATTER OF THE ESTATE OF WILLIAM KAMUREN CHRICHIR
(DECEASED)**

BETWEEN

BETCY CHERUTO BIRGEN OBJECTOR

AND

DANIEL KIPROTICH CHRICHIR 1ST RESPONDENT

CAROLYNE JEBIWOTT CHRICHIR 2ND RESPONDENT

CHRISTIAN KIPKOECH CHRICHIR CHEPKUT 3RD RESPONDENT

RULING

- 1 The applicant approached this court under certificate vide a summons dated March 10, 2023 seeking the following orders;
1. That this application be certified as urgent and be heard ex-parte in the ; first instance.
 2. That this Honourable Court be pleased to stay the publishing of the cause in the Kenya Gazette or any further proceedings in the matter pending the hearing of this application.
 3. That the Petition dated January 15, 2023 be struck out.
 4. That this Honourable Court be pleased to give directions on who should Petition for Grant of Letters of Administration.
 5. That this Honourable Court be pleased to give any further order/directions as it may deem fit in the circumstances.
 6. That the costs of this application to be in the cause.



- 2 The application is premised on the grounds set out therein and the averments in the supporting affidavit.

Applicant's case

- 4 The applicant filed submissions on May 23, 2023. Learned counsel for the applicant contends she is a widow of the deceased whereas the respondents are his brother and sister and therefore they have no capacity to apply for letters of administration. Further, that the succession cause is due for publication in the Kenya Gazette as the same was forwarded to the Government printers on February 24, 2023. She urged that it would be a miscarriage of justice if the same is published before the application is determined.
- 5 She urged that she was shocked to learn that the deceased's siblings had applied for the grant of letters of administration without her involvement and produced evidence that she was the deceased's wife, the evidence being copies of his eulogy and a letter from the chief. She maintained that the petitioners were not the dependants to the deceased and that they should have issued a citation to her before filing the case. She urged that the petition did not disclose some of the petitioners; assets and that it is fundamentally flawed.
- 6 Learned counsel for the applicant submitted that as per the provisions of Section 66 (a) and (b) of the Law of Succession Act and section 3, the applicant has priority of filing for letters of grant of administration. The Respondents on the other hand are only entitled to apply in the event the deceased died without a spouse or children, with priority according to their respective beneficial interests. He submitted that Section 26 of the Act as well as Rule 7 (7) of the Probate and Administration Rules provide that notice must be given to anyone who has a right to apply for Grant of Letters of Administration in the same degree or in priority to the person wishing to Petition. Further, the person who makes the Application would need to provide that anyone who has a right to apply and has not done so has either, renounced their right to apply, consented for another party to apply or has been issued with a citation, In the present case, no such notice was issued to the Applicant.
- 7 Learned counsel submitted that in seeking Orders for Stay of gazettelement and proceedings, the Applicant relies on Section 73 of the Probate and Administration Rules which gives the Court power to make orders to meet the end of justice. That a prayer to stay the gazettelement as well as further proceedings is one such prayer that is covered under Section 73 of the Rules.
- 8 Counsel urged the court to allow the application as prayed.

Respondent's case

- 9 The respondents opposed the application vide a replying affidavit dated March 20, 2023 which was sworn by Daniel Kiprotich Chirchir. He deposed that the applicant had filed for divorce and that she only withdrew the case in January 2023. Further, that she had filed a matrimonial cause against the deceased vide Eldoret High Court Matrimonial Cause No. 2/2021 (OS) seeking distribution of what she alleged to be matrimonial property.
- 10 He urged that the issue as to whether the applicant is the sole widow is a matter of evidence which the court will have the opportunity to determine during distribution of the estate. Further, that nothing bars a litigant from moving the court to seek rectification of grant once new assets of a deceased person are traced. He stated that whether or not they are legitimate beneficiaries of the estate is a matter the court will deal with at the time of confirmation of the grant. Additionally, he stated that they had



moved the court for the benefit of the brothers' children hence the reason all of them were included as beneficiaries.

Analysis & determination

11 Upon considering the application and the grounds set out therein, the following issues arise for determination;

1. Whether the court should stay the publication of the cause in the gazette notice.

Whether the court should stay the publication of the cause in the gazette notice

12 This is a very peculiar prayer that the applicants have sought as counsel for the applicant, I believe, is well versed in the law of successions in general and objection proceedings in particular. The purpose of gazetting of the cause serves the purpose of notifying any parties with interest in the estate of the deceased to object to the petition for grant of letters of administration of the estate. To then come and ask the court to stop the gazetting is to pre-empt the objection proceedings and an abuse of the court process.

13 I refer the applicant to section 67 of the *Law of Succession Act* which stipulates as follows;

- (1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.
- (2) A notice under subsection(1) shall be exhibited conspicuously in the courthouse, and also published in such other manner as the court directs.

14 This lays down the procedure for a petitioner having petitioned for a grant to publish the application in the Kenya Gazette which then invites any objectors as per the provisions of section 68;

- (1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.
- (2) Where notice of objection has been lodged under sub-section (1), the court shall give notice to the objector to file an answer to the application and a cross application within a specified period.

15 It is only upon the determination of the objection proceedings that the grant shall be confirmed. It baffles this court as to why counsel elected to seek to stop the very process that would provide an avenue to challenge the application. At the risk of casting aspersions, it appears that this is a delay tactic and the court shall not participate as a pawn in the wars between the parties.

16 The law is categorical on this procedural protocol on the making of grant of representation to administer intestate estate. Further in section 69 of the same *act* postulates as follows:

1. Where a notice of objection has been lodged under subsection (1) of section 68, or no answer to no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application
2. When an answer and a cross-application have been filed under sub section (2) of section 68, the court shall proceed to determine the dispute.



- 17 In identifying the norms in grant making for legal presentation, the court *in Re-Estate of Shem Kitanga (Deceased)* the court had this to say: “ That a succession cause starts with an introduction letter from the chief of the area where the intended petitioners hail from . Though it is not a legal requirement, it is presumed the chief is well familiar with the family of the deceased person and can inform the court of the beneficiaries left behind by the deceased”.
- 18 A similar argument has been made regarding this subject matter by the court in the case of *Re Estate of Quintus Ekesa (Deceased)* (2021) eKLR where the court therein had no had no basis for filing an objection and that in doing so, the same was premature, incompetent and improper before tht court as the procedure prescribed in section 67, 68 and 69 of the *law of Succession Act* was complied with.
- 19 It is notable that the Act requires that in cases of total or partial intestacy the names and addresses of all surviving spouses or spouse, children, or in any other case parents or siblings of the deceased should be given by the petitioner when filing the petition. The probate and administration rules confers mandatory obligation on the part of the petitioner to disclose all relevant material on survivorship and the free intestate estate of the deceased. Rethinking the scope of this application on stay as filed by the objector, raises pertinent questions in terms of the prescribed legal process of petitioning for grant which form part of the substantive relief sought in the action. I do not think for a moment that the instant objection provides and appropriate vehicle upon which this court can exercise discretion in favour of the objector. The position has confirmed in law a probate court exercises jurisdiction in intestate proceedings against the estate of the deceased with first establishing existence of a grant of representation under Section 54 of 67 of the *Law of Succession Act*. That is to say in my view the basis for granting the injunction is that the person enjoined holds or controls against which a judgment could potentially be enforced. A major step taken by the petitioners is evolve the commencement of the probate cause litigation as between the rightful beneficiaries as defined under Section 29 (A) & (B) of the Act. The powers conferred by sections 66,67 & 69 of the operative Act is of enormous breadth. It may be said that by the same token upon gazzement of the petition there is an opportunity for any objector to put obstacles in the way of a petitioner who filed the petition tainted with any grounds stipulated under Section 76 of the *Law of Succession Act*. Whatever the previous action the petitioner may have taken the court is enabled by virtue of Rule 73 (1) of the *Probate and Administration rules* and in terms of Section 66, 67 & 69 of the *Act* in a proper case to decline grant of letters of presentation which may not abide with express provisions of section 66. In matters of this kind, it is essential that the court should adopt the guidelines for the exercise of discretion to meet the circumstances of the case and the interest of justice so as not to frustrate the petition for making of the grant of representation which gives an opportunity for any objector to pursue his or her interest as a continuing proceedings in the right forum. No doubt, the objector’s rights have not been extinguished by the appropriate step taken by the proposed petitioners to initiate proceedings on behalf of the estate of the deceased. Though frowned upon is a milestone in the development of the process of litigation before this court to identify legitimate beneficiaries and the property founded by the deceased during his lifetime. It is clear from the discussion preceding this conclusion in referring to a course of action recognised by the Kenyan Law the objector would accorded an opportunity to ventilate her case against the substantive light of granting the petitioners locus standi to administer the deceased estate. As for the manner in which to raise the intended objection, the law provides for a 30 days period to restrain the proceedings from moving to the next stage on grounds she had not been involved to the validity of the petition. On the other hand, the objector seeks an order staying an action of a separate entity who is not enjoined in the cause. Therefore, if the court were to grant such orders, how then would the same be enforced as the government printers is not a party to this suit? In my view the orders would be unenforceable which is unconscionable as courts do not issue orders in vain.



- 20 The proposition asserted by the objector on the authority of Section 66 of the *Act* may only be granted to protect her legal right on clear reasons which justify the strict analysis of the facts and as to the sufficient cause which the petitioners adverted to in excluding her participation in administering the estate of the deceased apparently for one who is undisputedly a spouse. In my judgement, I am not in any way endorsing the position taken by the petitioners as devised in the petition lodged with the government printer.
- 21 For those reasons, I exercise discretion to decline the objection which had not ripened with no orders as to costs.

DELIVERED VIA E-MAIL DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF MAY 2023

R. NYAKUNDI

JUDGE

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