



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. E067 OF 2021
IN THE MATTER OF THE ESTATE OF LUCY MUTHONI OBAT (DECEASED)

JOHN GICHIA.....1ST APPLICANT/1ST PETITIONER

JANE NJOKI MUTHONI.....2ND APPLICANT/2ND PETITIONER

VERSUS

BARACK OBAT BLASTO..1ST RESPONDENT/OBJECTOR

PERES ACHIENG OBAT.....2ND RESPONDENT

MOSES KANYUIRA OBAT.....3RD RESPONDENT

ERICK KARANJA OBAT.....4TH RESPONDENT

SIMON NGUGI.....5TH RESPONDENT

JOSEPHAT KYUMA.....6TH RESPONDENT

WILLIS OKUMU.....7TH RESPONDENT

RULING

1. The deceased Lucy Muthoni Obat died intestate on 24th July 2018. Her children John Gichia and Jane Njoki Muthoni petitioned this court for the grant of letters of administration. A grant was issued to them on 9th August 2021.
2. When John Gichia filed the application dated 19th January 2021 seeking injunction and other orders against the objector Barack Obat Blasto, he swore that the objector was the deceased's spouse (widower). The application was heard and determined before the grant. The grant was issued without reference to the objector. It was known that the objector was laying a claim to some of the properties the petitioners had indicated in the petition that they belonged to the deceased. This is the grant that the objector is seeking to revoke in the application dated 6th September 2021. He is saying that because he was the deceased's widower he had priority over the petitioners on the question of who to issue the grant to. He states that his position as widower had become clear in the objection dated 12th March 2021, and also in the objection dated 30th July 2021 that was on record.
3. There is an application dated 7th October 2021 by the petitioners against the objector and Moses Kanyuira Obat, Erick Karanja Obat, Solomon Ngugi, Josephat Kyuna and Willis Okumu seeking to restrain them from intermeddling in, interfering with, accessing, trespassing onto, managing, collecting rent, dealing with the tenants, disposing, selling and/or transferring the deceased's property comprised in:-
 - (a) Komarock Phase 5B Door 23;
 - (b) Dandora Phase 5 Plot No. E 1903;

- (c) Plot No. 94 Umoja Phase II Zone 8;
- (d) Plot No. B1 – 268 Kayole Site and Service Scheme;
- (e) vehicle KCJ 315Z;
- (f) Ruiru/Kiu Block 13/942 Mwiki Certificate No. 1090;
- (g) Mathare Slums Upgrading H1 Door No. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 16 and 17; and
- (h) Mathare North Area 3 Plot 116B.

4. The application further sought that the objector does produce and render a full and accurate inventory and account of all his dealings with the estate of the deceased, including rent, from the time the deceased died to the date of the court order.

5. The application was premised on the fact that the petitioners had been issued with the grant, and yet the objector and those named had refused to surrender the estate to them and had continued to manage the estate and collect rent. This is the same grant that is in contention in the application by the objector.

6. Once the petitioners had admitted that the deceased had left a widower (the objector), and it was evident that they had petitioned for the grant with reference to him, it was always going to be an issue whether they were entitled to the grant. When they gazetted the petition, and before the grant was issued, the objector, being the widower of the deceased, was entitled to notice.

7. **Section 66 of the Law of Succession Act (Cap. 160)** provides that:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

It follows that, now that there was a petition on record and the objector was already a party to the proceedings following the petitioners’ application dated 19th January 2021, it was incumbent upon the petitioners to notify the objector before they had obtained the grant. The court was then going to determine, who between the petitioners and the objector, would be issued with the grant.

8. I should mention that the objection dated 30th July 2021 was not paid for until after the grant was issued. It was paid for on 11th August 2021. Technically, the objection was filed late. However, the objector was already in the proceedings, and the petitioners knew that he was the widower who had prior claim to the grant.-

9. The other consideration is that, now that the petitioners filed the petition, did not cite the objector, did not name him or provide his address, the objector had not renounced his claim to the estate, under **section 51(2)(g)** of the **Act** and **rules 7(1)(e)** and **26** of the **Probate and Administration Rules** the grant is revocable. **Rule 26(1)** provides that-

“Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.”

The objector had priority claim to the grant and was therefore entitled to be notified by the petitioners before the grant was issued to them.

10. Under **section 76(a)** of the **Act**, I find that the proceedings to obtain the grant were defective in substance. Consequently, I revoke the grant that was issued to the petitioners on 9th August 2021.

11. I have indicated that the application dated 7th October 2021 by the petitioners proceeded on the basis that they had valid grant and were seeking to execute their mandate as the administrators of the estate of the deceased. Now that the grant has been revoked, the application has failed and is dismissed.

12. I ask that, because this is a family dispute, each side will bear own costs.

13. So that this matter can progress, I direct that the question as to who, between the petitioners and the objector, shall be issued with the grant of letters of administration intestate be addressed through written submissions by counsel. This is because the facts appear clear. The petitioners shall within 14 days' file and serve written submissions and upon service the objector shall file and serve within 14 days. The matter shall be Mentioned on 7th March 2021 to give a ruling date.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 17TH JANUARY 2022.

A.O. MUCHELULE

JUDGE