



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYAMIRA
SUCCESSION CAUSE NO E001 OF 2021
IN THE MATTER OF THE ESTATE OF JOHNSTONE OCHWANG'I MORONGE (DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR THE REVOCATION OF GRANT
BETWEEN
DAVID OGEGA OCHWANGI.....OBJECTOR
VERSUS
RUDIAH KEMUNTO OCHWANG'I.....1ST PROPOSED PETITIONER
MAKORI OCHWANG'I MURONGE.....2ND PROPOSED PETITIONER

RULING

INTRODUCTION

1. On 6th May 2021, the Objector herein lodged a Notice of Objection against the issuance of the Letters of Administration in respect of the estate of Johnstone Ochwang'i Moronge (hereinafter referred to as "the deceased") to Rudiah Kemunto Ochwang'i and Dr Makori Ochwang'i Moronge, the deceased's widow and son respectively and the Proposed Administrators to the deceased's estate herein.
2. The Objector averred that the Petition was fatally flawed, unlawful and contrary to the succession laws of Kenya. His said Objection was premised on the grounds that the rest of the family members in the deceased's estate with whom they have an equal shared interest in the said estate did not authorise the Proposed Petitioners to obtain the Grant of the Letters of Administration *Ad Litem* and that their signatures were forged.
3. It was his averment that the Proposed Petitioners had unclean hands and were attempting to defraud and disinherit other beneficiaries by clandestinely filing this application. He pointed out that he filed the present objection when he discovered the chicanery. He thus urged this court to revoke and/or annul the said Grant dated 15th January 2018 and to impose legal sanctions and penalties upon the Proposed Administrators.
4. On 29th November 2021, this court directed the Proposed Administrators to respond to the Objector's Chamber Summons application dated 5th April 2021 and filed on 29th May 2021 seeking the setting aside and/or annulment and/or revocation of the Limited Grant that was issued on 15th January 2018. The said Chamber Summons application also bore a stamp of the High Court Nyamira of 6th May 2021, which was the same date that the Objection herein was filed. It was this latter stamp that led this court to give directions on the filing of Written Submissions.
5. As the Proposed Administrators did not respond to the said application, on 31st January 2022, this court reserved its Ruling of the said Chamber Summons application dated 5th April 2021 and filed on 29th May 2021.
6. Notably, the Proposed Administrators were represented by counsel on 29th November 2021. Their counsel indicated that the said application Chamber Summons application could be disposed of by way of Written Submissions.

7. However, this was clearly misleading to the court because at the time of writing this Ruling, it noted that the said application had actually been filed at the Chief Magistrate Court at Nyamira and that what was actually before it was the Objection to the issuance of the said Limited Grant of Administration *Ad Litem*.

8. The Ruling herein is therefore in respect of the said Objection that was filed on 6th May 2021.

LEGAL ANALYSIS

9. On 15th March 2021, the Proposed Administrators Petitioners petitioned for the Letters of Administration intestate dated 27th July 2020 in respect of the deceased's estate.

10. The Notice notifying the Principal Registrar of the application for letters of administration in the deceased's estate annexing all the relevant details of the deceased and/or Particulars of the application for grant was dated 16th April 2021. The Notice to the Government Printer for publication of the Cause herein in the Kenya gazette was of even date. The said Notice clearly indicated that the Objection to the Petition for the Grant of Letters of Administration Intestate in the prescribed form was to be made within thirty (30) days of the said publication in the Kenya Gazette.

11. The procedure for objection is addressed in Sections 67, 68 and 69 of the Law of Succession Act Cap 150 (Laws of Kenya). Rule 17 of the Probate and Administration Rules details how the objection is to be lodged at the registry, how the petitioners and principal registrar are to be notified of the objection, the filing of answer and cross-petition by the objector, the extension of time by the registrar where an application in that regard has been made and determined by the court of the petition and cross-petition. A person may object to issuance of letters of administration in respect of a deceased's estate within the period stipulated in the Kenya Gazette.

12. Notably, Section 67 (1) of the Law of Succession Act provides that:-

“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 the 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 (emphasis court).”

13. Further, Section 68 of the Law of Succession provides that:-

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 subsection (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.

14. Section 69 of the law of Succession Act further stipulates that:-

1. Where a notice of objection has been lodged under subsection (1) of section 68, or no answer or 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. Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.”

15. It was not clear to this court if the Cause herein had already been advertised in the Kenya Gazette. Suffice it to state that the Petition for Grant of Letters of Administration Intestate had not been issued herein. In the absence of proof that the Cause herein had been advertised in the Kenya Gazette, this court found and held that the filing of the Objection as contemplated in Section 68 of the Laws of Succession Act was premature.

16. In this regard, it fully associated itself with the holding in the case of **In Re Estate of Quintus Ekessa – Deceased [2021] eKLR** where the court therein held that as the pre-requisite gazette notice had not been issued, the objector therein had no basis for filing an objection and that in doing so, the same was premature, incompetent and improper before that court as the procedure prescribed in **Sections 67, 68 and 69** of the **Law of Succession Act** was not complied with.

17. The procedure of how the Objection to a grant of letters of administration is to be made is given in Rule 17 of the Probate and Administration Rules. It states that:-

1. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.

2. A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.

3. There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.

4. Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.

5. The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.

6. If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.

18. The effect of Sections 68(2) and 69(1) of the Law of Succession Act is that Objection proceedings in which no answer and cross-petition are filed are incomplete and the court may proceed to make a grant to the petitioner.

19. It is clear from Rule 17(6) of the Probate and Administration Rules that the intervention of the court will only come in after an objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself. There was no answer and cross-petition that would have warranted the Objection being placed before this court. The procedure of placing of the Objection herein before this court was therefore irregular.

20. Indeed, there was nothing on record to show that the Deputy Registrar had complied with the provisions of Rule 17 (4) and (5) of the Probate and Administration Rules before placing of the Objection before this court as envisaged in Rule 17(6) of the Probate and Administration Rules.

21. The above notwithstanding, this court further came to the firm conclusion that the Objection herein was incompetent, defective *ab initio* for the reason that there was a disconnect between the Objection and the Petition herein. They both related to different causes of action. Notably, the Objection herein related to the Limited Grant of Letters of Administration *Ad Litem* that had been issued in the **Chief Magistrate's Court Nyamira in Succession Cause No 93 of 2017 In the matter of the Estate of Johnstone Ochwang'i**. The Cause herein is **Succession Cause No E001 of 2021 In the matter of the Estate of Johnstone Ochwang'i Moronge**.

22. As the Objection proceedings had been filed herein, they ought to have been in respect of **Succession Cause No E001 of 2021 In the matter of the Estate of Johnstone Ochwang'i Moronge** and not **Succession Cause No 93 of 2017 In the matter of the Estate of Johnstone Ochwang'i**. If the Objector had intended that the said Objection was to be in respect of **Succession Cause No 93 of 2017 In the matter of the Estate of Johnstone Ochwang'i**, then he ought to have instituted proceedings in that file.

DISPOSITION

23. For the foregoing reasons, the upshot of this court's decision was that the Objector's undated notice of Objection filed on 6th May 2021 was not merited and the same be and is hereby dismissed.

24. For the avoidance of doubt, the Objector herein still has the right to lodge Objection proceedings herein in respect of the Petition for the Grant of Letters of Administration Intestate once the same is published in the Kenya Gazette.

25. It is so ordered.

DATED and DELIVERED at NYAMIRA this 4th day of April 2022

J. KAMAU

JUDGE