

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 899 OF 2011

IN THE MATTER OF THE ESTATE OF CALEB OLUCHINA OPUKA, DECEASED

RULING

1. The deceased herein died on 6th July 2011. Representation to his estate was sought in a petition lodged herein on 23rd November 2011 by Filisi Owendi Ombima. Letters of administration intestate were accordingly made on 7th February 2012 and a grant was issued on 16th February 2012.
2. A summons was filed on 19th July 2012, by Jane Opuka, seeking revocation of the said grant principally on grounds that she had not been consulted before the petition was filed. The application was disposed of orally. A judgement was delivered on 28th July 2016. The application was dismissed. Subsequent to that dismissal, the administrator applied for confirmation of her grant, through a summons dated 15th September 2016.
3. In response to that application, Jane Opuka lodged a document headed “objection to the confirmation application”, brought under section 68 of the Law of Succession Act, Cap 160, Laws of Kenya. She complained that she had not been provided for under sections 26, 27, 28, 29 and 30 of the Law of Succession Act, she had not consented to letters of administration being made to the administrator and that she had made reports of forgery of her signature to the police.
4. Objections under section 68 of the Law of Succession Act can only be filed before the grant is made. It would an objection to the grant being made. The filing of the objection should thereafter be followed by the filing of an answer to the petition and a cross-petition. A close reading of sections 67, 68, 69 and 70 of the Law of Succession Act, will reveal that such an objection follows the publication of the cause in the *Kenya Gazette* inviting objections. The objection ought to be filed within the period given in the Gazette Notice. A grant is to be made only after the objection has been disposed of.
5. The cause herein appeared in the *Kenya Gazette* of 6th January 2012, as Gazette Notice No. 74. It invited objections to be filed within thirty days. No such objections were filed hence the making of the letters on 7th February 2012 and issuance of the grant on 16th February 2012.
6. The purported notice under section 68 is belated if it seeks to challenge the making of the grant to the administrator. It should have been filed in January or February 2012. The issues it raises in Nos. 2 and 3, ought to have been dealt with before the grant was made. For that reason the same must have been filed in abuse of court process.
7. The issues raised in No. 1 of the objection are issues that fall under Part III of the Law of Succession Act. Under section 26 the law requires that a person who is not adequately provided for to file a formal application taking the form of a summons brought under Rule 45 of the Probate and Administration Rules, supported by an affidavit addressing the matters listed in section 28 of the Law of Succession Act. No such application has been filed and the issue of lack of reasonable provision cannot, in the circumstances, be addressed in the absence of such an application.
8. It is purported that the objection is to confirmation of the grant. Confirmation of grants is not governed by section 68 of the Law of Succession Act but by section 71. The procedures governing confirmation of grants are provided for in Rules 40 and 41 of the Probate and Administration Rules. Under those Rules there is no provision for the filing of any objections. A party who is opposed to a grant being confirmed files an affidavit of protest under Rule 40(4) of the Probate and Administration Rules. The purported objection to the confirmation of grant is, therefore, a document filed in abuse of court process.
9. Ideally, the court should have struck it out. There is nothing to hear. The parties have wasted their time waiting for proceedings to be conducted on the basis of a document that was filed in abuse of process.
10. Some of the issues raised were issues that were raised by Jane Opuka in her ill-fated summons for revocation of grant that was dismissed on 28th July 2016. It would appear that she was not satisfied with the outcome, and the purported objection is designed to ventilate her disappointment. If she was aggrieved by the judgment of 28th July 2016, then she should appeal against it. The issue relating to the appointment of the administrator as such is now water under the bridge. It cannot be revisited.
11. I need not say more, the objection dated 17th August 2017 was filed in abuse of court process. It is hereby struck out. The administrator shall have the costs. Any party aggrieved should move the Court of Appeal appropriately. The confirmation application shall be set down for hearing, and Jane Opuka shall be at liberty to file an affidavit of protest limited to the proposals on distribution of the assets.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 20TH DAY OF DECEMBER, 2019

W. MUSYOKA

JUDGE