



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 325 OF 2016

IN THE MATTER OF THE ESTATE OF JIMMY PALURAM JAGATRAM BABURAM
(DECEASED)

RULING

1. An application by way of a summons dated 21st July 2016 was lodged herein on the same date under certificate of urgency. It sought two principal orders – stay of issuance of letters of administration pending hearing and determination of the application and extension of time to file an objection to the petition.
2. The same was placed before me on 21st July 2016 for consideration of its urgency and for further directions. After evaluating the same, I was satisfied of its lack of urgency and directed that the same be served, to be heard thereafter on a date to be obtained at the registry. The record indicates that on 22nd July 2016, the applicant’s advocates visited the court’s registry and were given 7th September 2016 as the date for the hearing of the application.
3. Apparently unhappy with the date given, counsel for the applicant wrote to the Deputy Registrar a letter dated 25th July 2016, which was lodged at the registry on 26th July 2016, pointing out that he would have wanted to address the court on 21st July 2016 when the matter was placed before the Duty Judge. He pleaded that the matter be placed before me so that he could address me on matters that might have escaped my attention.
4. The file was placed before me, and counsel appeared and addressed me. He stated that he sought both stay of issuance of the grant and extension of time to file objection. He stated that under section 68(1) of the Law of Succession Act, Cap 160, Laws of Kenya, it is required that an objection be filed within the period prescribed or with such other duration as the court may allow. In the view of that provision gives the court discretion to extend time for the filing of an objection. He went on to cite other provisions under which the court may extend time.
5. I need to state that counsel did not tell me anything that was not in my mind on 21st July 2016, when I gave the directions that are on the record. Crucially, he did not seek to demonstrate the urgency that there was to warrant granting the orders sought without hearing the parties *inter partes*, or the prejudice that the applicant stood to suffer should the orders that he sought not be granted in a summary manner. As a matter of course, a party who fails, for whatever reason, to lodge an objection within the time prescribed still has the option of seeking revocation of a grant of representation once one is made. Both procedures ultimately lead to the same goal.
6. Counsel sought to convince me to grant prayer 3, which seeks the main order, for extension of time to

lodge objection, *ex parte*. The matter is contentious at this stage, for the applicant seeks a remedy after the time within which he was expected to act has expired. An order for extension of the time cannot be made without hearing the other party. The cause having been gazetted, and the time given for objections having expired, it would be the legitimate expectation of the petitioners that a certificate of grant of representation should issue as a matter of course. An extension in the circumstances cannot be granted in proceedings where they are excluded.

7. In any event, the application dated 21st July 2016, was crafted in a matter that anticipated that it would be disposed of *inter partes*. In the first place it is indicated that it is to be served on counsel for the petitioners. Secondly, its prayer 2 seeks stay of issuance of the grant pending hearing of the application.

8. Should I grant prayer 2 thereof? There is no provision for grant of order to stay issuance of a grant, but the court does have inherent jurisdiction under Rule 73 of the Probate and Administration Rules. It has not been demonstrated that the court is likely to make the grant and issue letters of administration as prayed despite pendency of this application, but to give comfort to the applicant it may be necessary to grant the order.

9. The orders that I am moved to make at this stage are:-

(a) That the applicant shall comply with the directions given on 21st July 2016;

(b) That the matter shall be heard *inter partes* on 7th September 2016 as scheduled; and

(c) That there shall be stay of the issuance of the grant herein, to subsist till 7th September 2016.

10. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF JULY, 2016.

W. MUSYOKA

JUDGE