



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 293 OF 2011**

*In the Matter of the Estate of Japhet M' Tuamwari M' Ikandi (Deceased)*

**HENRY KOOME.....PETITIONER**

**Versus**

**ROSALIA JOHN MUKO MUTHAMIA.....OBJECTOR**

**RULING**

**Striking out of Objection**

[1] By Summons dated 20<sup>th</sup> April 2012 and which is expressed to be brought pursuant to Section 69 (1) of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, the Petitioner has sought the following orders:

- 1. THAT the honourable court be pleased to issue Grant of Letters of Administration intestate to the Petitioner Henry Koome.***
- 2. HAT the objection to making of Grant filed on 28<sup>th</sup> June 2011 be struck out.***
- 3. THAT costs of the Summons be awarded to the Petitioner.***

[2] The Petitioner advanced the following grounds in support of his said application:

- 1. THAT the Objector has never filed any answer to the Petition and cross petition for Grant as per the provisions of section 68 of the Law of Succession Act.**
- 2. THAT the Petitioner is unable to proceed with the Petition filed in court due to the incompetent objection.**
- 3. THAT there is need to expedite the administration of the deceased's estate.**
- 4. THAT the objection is prejudicing the conclusion of the succession cause herein.**

[3] The record shows that this cause was filed by the Petitioner on 6<sup>th</sup> June 2011 after a Citation to accept or refuse Letters of Administration intestate in respect of the deceased was issued upon the Objector and seven other persons. Subsequently, the Objector filed an objection on 28<sup>th</sup> June 2011. The Petitioner contended that to date the Objector had never filed any answer to the Petition or Cross Petition nor fixed her Objection for hearing. Consequently the Petitioner prayed that the Objection be struck out and he be

issued with Letters of Administration.

[4] The Application was opposed through grounds of opposition filed in court on 18<sup>th</sup> May 2012. In those grounds, the Objector argued *inter alia* that the provisions of Rule 17 (5) of the Probate and Administration Rules and Section 68 (2) of the Law of Succession Act had not been exhausted and that the mistake squarely falls on the Registrar High Court Meru. She stated that she had written a letter to the DR on this matter. Therefore, according to her, the objection should not be struck out.

## **DETERMINATION**

### **Petitioner filed no submissions**

[5] When the matter came up for hearing on 7<sup>th</sup> June 2016, the court observed that the Petitioner had not filed his submissions to the application despite clear orders to do so. The court then directed that it will determine the application on the material before court. I shall do so now.

[6] I have carefully considered this application and the Objector's submissions. I take this view of the matter. This application is for striking out of the objection to the grant of letters of administration. Thus, looking at the nature of the application and the submissions by the Objector, Section 68 of the Law of Succession Act is important. Section 68(1) provides as follows:

***“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 the notice, or such longer period as the court may allow.”***

Subsection 2 thereof further provides:

***“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.”***

Doubtless, an objection to grant of representation was filed on 28<sup>th</sup> June 2011 but the court is yet to give notice to the Objector to file an answer to the application and a cross application as required in Section 68(2) of the Law of Succession. Accordingly, the delay in this matter- albeit inordinate- has not been caused by and may not be ascribed to the Objector. Consequently, the Application for striking out the objection was made prematurely. Accordingly I dismiss the application dated 20<sup>th</sup> April 2012. But to ameliorate the situation, I direct the Deputy Registrar to forthwith issue the relevant notice to the Objector to take such steps or file such pleadings as are by law required. This being a succession matter there will be no order as to costs.

**Dated, signed and delivered in open court at Meru this 19<sup>th</sup> day of July 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

**Mr. Muriuki advocate for objector**

**Mr. Mutegi advocate for petitioner**

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**F. GIKONYO**

**JUDGE**