

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 529 OF 2014

IN THE MATTER OF THE ESTATE OF GACHAU KABUTHIA (DECEASED)

MBUTHIA GACHAU.....PETITIONER

VERSUS

ELIZABETH NJERU KUIBITA.....OBJECTOR

RULING

1. In this application, the objector has lodged an objection dated 27th April 2015 against the grant of representation in favour of Mbuthia Gachau (the petitioner), who is named as the executor of the will of the deceased. In support of her objection, the objector's counsel has filed written submissions in which the validity of that will has been challenged on the ground that the deceased was incompetent to make the said will.

2. The petitioner's counsel has also filed written submissions in opposition to the objection. The petitioner's counsel has submitted that under Rule 17 (1) of the Probate and Administration Rules, an intending objector must do so within the period specified in the notice of publication under Rule 17 (4) of the Probate and Administration Rules. According to counsel, Rule 17 (4) stipulates a period of 30 days from the date of publication within which an objection should be lodged. In the instant application, this cause was advertised in the Kenya gazette on 30th January 2015 and the period of 30 days lapsed on 2nd March 2015. In his view, the objector is clearly out of time. Additionally, counsel has submitted that the objector did not bother to seek extension of time under Rule 17 (1) in order to be permitted to lodge her objection. Counsel further submitted that the failure to do so constitutes an abuse of the court process and that this objection is frivolous and vexatious.

3. Furthermore, counsel has submitted that under the provisions of Rule 17 (5) to (10), the objector neglected to pursue for more time within which to file her answer to the petition for a grant together with a petition by way of a cross application for a grant. The failure to do so renders the objectors' "*affidavit of objection*" as being of no substance and being devoid of any contestable status under the Law of Succession Act (Cap 160) Laws of Kenya. Additionally counsel has also submitted that the issues raised in the objectors' submissions are matters of substance that ought to be canvassed at the stage of the distribution of the assets of the deceased and not at the administrative/ministerial stage of the cause, where the court has been approached only for the purposes of the appointment of the administrator.

4. Finally, he has concluded his submission by pointing out that the legality/existence of the will and as to who are the beneficiaries raised in the affidavit of objection are premature and shall have their day in court at a later stage namely during the confirmation proceedings. It is for these reasons that counsel has urged the court to dismiss the application with costs to the petitioner.

5. I have considered the affidavit evidence of the objector and that of the petitioner. I find that this succession cause was advertised in the Kenya gazette on 30th January 2015. In terms of **Rule 17**, the objector had 30 days within which to lodge her objection, which was to be accompanied by an answer to the petition for a grant together with a petition by way of a cross-application for a grant in terms of **Rules 17 (5) to (10)**. Her objection titled "*affidavit in support of objection to making of grant*" is clearly out of time. Additionally, the objector's counsel has not sought and obtained leave within which to file the objection as stipulated by law. Time limits serve the purpose of expediting the succession proceedings

and must be complied with. They are not be technical rules.

6. In the circumstances, I find that the application of the objector is filed out of time and for this reason, it is hereby struck out with liberty to re-apply as stipulated by ***Rule 17 of the Probate and Administration Rules.***

7. There will be no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **30th** day of **AUGUST 2016**

In the absence of the petitioner and in the presence of Mr .Andande holding brief for Mr. E Njiru for the petitioner

Court clerk Njue

J.M. BWONWONGA

JUDGE

30.08.16