



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**SUCCESSION CAUSE NO. 2340 OF 2012**

**IN THE MATTER OF THE ESTATE OF AMAR KAUR MATHARU- (DECEASED)**

**RULING**

1. The application that I am called upon to determine is

dated 3<sup>rd</sup> July 2013. It seeks that the Notice of Objection dated 23<sup>rd</sup> April 2013 and the affidavit of the objector sworn on 23<sup>rd</sup> April 2013 be struck out and expunged from the record. The primary ground is that the Notice of Objection was filed out of time.

2. **Opposition has been raised to the application. There**

**is an affidavit on record sworn on 12<sup>th</sup> September 2013 by the objectors. The objectors have not addressed themselves to the issue raised by the applicant – that the Notice of Objection was filed out of time – instead they explain why they have filed the objection.**

3. **The deceased, the subject of these proceedings, died**

**on 5<sup>th</sup> April 2012. Representation to his estate was sought on 1<sup>st</sup> October 2012 by the petitioner who described herself as “the eldest child in the family and daughter of the deceased.” The persons listed in the petition as the surviving children of the deceased include the objectors – Tarlochan Singh Matharu and Kamal Jeet Singh Matharu.**

4. **The petition was gazetted on 15<sup>th</sup> February 2013 in**

**Volume CXV Number 22 of the Kenya Gazette of that date.**

5. **On 20<sup>th</sup> April 2013 the objectors filed an objection to**

**the making of a grant. The said objection was dated 23<sup>rd</sup> April 2013. It was filed contemporaneously with the affidavits of the objectors. Their case is that the petitioner did not inform or consult them before she petitioned for the grant, neither did she obtain their consents. They also challenge her suitability to apply, founded on Sikh custom, she being a married daughter who is not permitted to inherit her father’s estate.**

6. **It is the process commenced on 26<sup>th</sup> April 2013 that the**

**Petitioner is seeking by her application dated 3<sup>rd</sup> July 2013 to have terminated on the grounds that the same was begun unprocedurally.**

7. The law on objections is to be found in *Sections 67,*

*68, 69 and 70* of the Law of Succession Act. The detailed procedure is set out in Rule 17 of the Probate and Administration Rules.

8. *Section 67* deals with the publication of applications

for grant. The publication of the notice of the filing of the application should invite objections to be filed within a period of not less than thirty days from the date of the publication of the notice of the application for grant. *Section 68* deals with objections to the making of a grant of representation. Notice of objection should be lodged in prescribed form within the period specified on the notice prescribed under *Section 69* of the Law of Succession Act. *Sections 69 and 70* deal with what happens once a proper objection has been lodged under *Section 68*.

9. Rule 17 prescribes the form of the notice of objection

and the processes that should follow thereafter. The notice of objection should be filed within the period envisaged in *Section 67* of the Law of Succession Act. Upon the notice being lodged, the court should, in terms of *Section 68(2)* of the Act, give notice to the objector to file an answer to the application for grant and a cross-application, with a verifying affidavit, within a specified period of time. The objection is not comprised in the notice of objection but in the answer and cross-application, and the affidavit in verification.

10. Is there a valid objection on record? I think not. In

the first place the papers filed in objection, by way of Notice of Objection under Rule 17(1), either in Form 76 or 77, should be lodged in court within 30 days. The Notice of Objection on record, in Form 76, was filed on 26<sup>th</sup> April 2013. The notice of the application for grant was published on 15<sup>th</sup> February 2013. Counting from 15<sup>th</sup> February 2013, thirty (30) days expired on or about 17<sup>th</sup> March 2013. The Notice of Objection filed on 26<sup>th</sup> April 2013 was therefore filed out of time. Apart from that, the objectors did not file any further process after the Notice of Objection was filed on 26<sup>th</sup> April 2013. I reiterate that the Notice of Objection is not a pleading. It is not a reply to the petition for grant. It is the answer to the petition and the petition by way of cross-application which reply to the petition for grant. It is these two twin processes that make up the objection. These two are pleadings. Technically, therefore, there is no objection on record.

11. I have come to the conclusion that there is merit in

The application dated 3<sup>rd</sup> July, 2013. The papers filed in court on 26<sup>th</sup> April 2013, that is to say the Notice of Objection and the affidavit supporting it, were filed out of time and without leave of court. There is also no objection on record. Their filing amounts to an abuse of the court process. I order that the same be struck out and expunged from the record.

12. To move this matter forward, I direct that a grant of letters of administration intestate do issue to Surinder Kaur Devgun as prayed in her petition filed in court on 1<sup>st</sup> October 2012.

13. This being a family matter, there shall be no order as

to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF January, 2014.

W. MUSYOKA

JUDGE

W. MUSYOKA

JUDGE