

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 525 OF 2012

AND

IN THE MATTER OF THE ESTATE OF JAMES MBUGUA KIMOTHO (DECEASED)

RULING

1. The petitioners, Grace Njoki Mbugua, Rachel Waithira Mbugua and Moses Muturi Mbugua, through a petition for grant of letters of administration intestate dated 1st March, 2012 presented the petition for estate of James Mbugua Kimotho in their capacity as widows and a relative of the deceased. They indicated in the petition that the deceased was survived by:

- a. Grace Njoki Mbugua – 1st Widow
- b. Rachel Waithira Mbugua – 2nd Widow
- c. Virginia Wambui Kaburi – Daughter
- d. Esther Wambui Ngugi – Daughter
- e. Rose Njambi Mbugua – Daughter
- f. Daniel Mungai Mbugua – Son
- g. Peter Njuguna Mbugua – Son
- h. Leah Wanjiru Mbugua – Daughter
- i. Rachael Waithira – Grand daughter
- j. James Mbugua Njeri – Grandson
- k. Judy Wairimu Mbugua
- l. Alex Njuguna Njeri – Grandson
- m. Esther Wambui Njeri – Grand Daughter
- n. Sarah Njambi Njeri – Grand Daughter

2. The objector, Peter Njuguna Mbugua, filed an affidavit to refuse letters of administration intestate on 7th May, 2012. In that affidavit he depones that one of the proposed administrators Moses Muturi Mbugua, is not a family member and therefore he cannot administer the estate of their father. He also states that the said Moses Muturi Mbugua is being imposed to the persons entitled by some of the family members who have ulterior motive. He avers that the consent made in this petition is a forgery, that some of the beneficiaries of the estate, namely Rose Njambi Mbugua and Judy Wairimu Mbugua live and work in Southern Sudan and have not come home for a while and were not present when the documents were

signed. Further, he contends that the personal sureties named in the petition are persons with interest in the assets owned by the deceased. He further says that James Warano Gakuru is a member of the Kikuyu Land Control Board Committee under which most of the properties fall and that Hezron Kaburu Boro is a brother-in-law married to his step sister, one Virginia Wamburu Kaburu, and this makes him a family member and therefore cannot be a personal surety. The Objector in his affidavit requests that the names Moses Muturi Mbugua, James Warano Gakuru and Hezron Kaburu Boro be removed from the petition.

3. When this matter came up for hearing on 6th November, 2013, the Objector was granted two weeks to instruct counsel. However, the Objector did not instruct counsel neither did he file an answer to petition and cross application as provided by law. Indeed, **Section 68 – 69 of the Law of Succession Act** provide for objections to application such as the one before this court. Section 68 in particular provides thus:

‘(1) **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 such notice as aforesaid, or such longer period as the court may allow.**

(2) **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.’**

4. In the instant case, the Objector despite being given time by this Court filed no answer or cross-application. It must be clearly stated that an objection can only be based on the answer to the petition as provided for in the law. **Section 69** of the Law of Succession Act states that –

‘(1) **Where a notice of objection has been lodged under [subsection \(1\)](#) of [section 68](#), or no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.**

(2) **Where an answer and a cross-application have been filed under [subsection \(2\)](#) of [section 68](#), the court shall proceed to determine the dispute.’**

5. Had the Objector filed an answer and a cross-application then this court would have proceeded to determine the dispute. Accordingly, this court’s opinion in the circumstances is that there is no objection that would warrant determination by this court.

6. I note that the petition herein is yet to be gazetted, consequently I hereby direct the Deputy Registrar to cause gazetting of the petition, upon payment of the requisite fees. There will be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

No appearance for the applicant.