



REPUBLIC OF KENYA

High Court at Meru

Succession Cause 25 of 1999

**IN THE MATTER OF THE STATE OF CHARLES MBAABU
M'ITHINJI.....DECEASED**

JENNIFFER KAJUJU.....PETITIONER

V E R S U S

SARAH WANJA MBAABU.....OBJECTOR

R U L I N G

The application is a Chamber Summons brought under Rule 73 of the Probate and Administration Rules, Succession Act Cap 160 Laws of Kenya

It seeks the following orders.

- 1. Moot.**
- 2. That the court be pleased to vacate orders issued on 22.10.02 to the Objector granting her leave to file objection out of time.**
- 3. That the court be pleased to order a release of funds held in court with respect to Meru CMCC No. 287 of 1999 to the Petitioner herein through the office of M/S F. K. Gitonga and Company Advocates.**
- 4. That costs be in the cause.**

The Application is supported by the grounds:

- a. That leave to file objection proceedings was granted on the 22.10.2002 but the Objector has failed, ignored and/or neglected to file her objections as directed.**
- b. That this is an old matter that is still pending until now despite the Objector having all the time to pursue her claim.**
- c. That the applicant herein had obtained Limited Grant on this estate and the matter in Meru CMCC No. 287 of 1999 concluded before the Objector brought her claim.**
- d. That the Applicant is an old woman of advanced age with poor health and might not enjoy her entitlement of this application is desired.**

e. That it is proper, just and in the best interest of justice that this application be allowed.

The application was argued by Ms Mutinda on behalf of the Applicant. The Respondent was represented by Mr. Igweta who submitted that they were leaving the matter for the court's discretion since they did not file any reply to the application. In Ms Mutinda's submission she urged the court to consider the grounds on the face of the application and in the supporting affidavit sworn by the Petitioner, and grant the prayers sought. Ms Mutinda urged that this matter has been delayed for ten years because the Objector despite obtaining leave to file objection proceedings on 22nd October, 2002 none have been filed to date. Counsel urged that the Applicant required funds held in court to enable her take care of the children of the deceased.

I have considered the application together with the grounds on the face of the application and in the supporting affidavit together with the submissions by both counsels. The application is unopposed since no replying affidavit was filed by the Objector. The brief background of the case is that the Petitioner is the mother of the deceased who died in a road accident on 15th June, 1997. The Petitioner obtained a Limited Grant of Administration through which he pursued a claim under the Law Reform Act and the Fatal Accidents Act. She contends that upon finalization of the suit and after the decree was issued the Objector appeared claiming to be the wife of the deceased. The Petitioner contends that the Objector requested for time to file her objection which request was granted to her on the 22nd October, 2002. Since obtaining that leave she has not filed any objection proceedings to date.

It is clear from the Supporting Affidavit that the payment of the decree of the claim by the Petitioner as the legal representative of the deceased was stalled by the Objector when she appeared in the scene and sought leave to file objection proceedings. The Petitioner's averments that no objection proceedings have been filed to date is not controverted. It can therefore be concluded that the Objector has been inordinate in filing the objection proceedings, and that there has been prolonged, unexplained unreasonable and inordinate delay in filing the objection proceeding. The only conclusion that this court can make is either that the Objector has lost interest in pursuing her claim or she has no claim whatsoever worthy pursuing. Whichever of the two is correct it is trite law that a court of law cannot aid the indolent or condone unreasonable or inordinate delay in cases. The Objector has been given ample opportunity to pursue her claim and she has decided not to seize that opportunity.

The court has unlimited and inherent powers to make such orders as may be necessary for the ends of justice to be met and to prevent abuse of the process of the court. Those are the provisions stipulated under Rule 73 of the P&A Rules under Cap 160 Laws of Kenya. The delay involved in this case is an abuse of the court process and results in denying justice to the Petitioner and the beneficiaries of the deceased, if allowed to stand.

In the result the Applicant's application dated 7th July, 2012 be and is hereby allowed with costs in the cause.

SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF MARCH, 2013.

J. LESIIT

JUDGE