



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 545 of 2012

IN THE MATTER OF THE ESTATE OF JAMES WAMBURA MUHIRI (DECEASED)

CHARLES M. WAMBURA.....1<sup>ST</sup> PLAINTIFF

MARY M. WAMBURA.....2<sup>ND</sup> PLAINTIFF

VERSUS

JANE BOKE NYANSIRI.....DEFENDANT

RULING

The defendant herein Jane Boke Nyansiri widow to the deceased filed a petition for grant of letters of administration dated 10<sup>th</sup> February 2012 and proceeded to advertise the same in the Kenya gazette on the 8th June 2012. The plaintiffs herein are the parents to the deceased issued a notice of abjection dated 20th June 2012. The plaintiffs sought to object the application for grant of representation claiming that they were not included as dependants of the deceased and alleged that the letter dated 9<sup>th</sup> February 2012 alleged to be from the area chief and used by the defendant in support of her application for grant of letters of administration was obtained fraudulently.

The plaintiff filed a notice of objection as provided for under **Section 68. (1) Law of Succession Act Cap 160** which provides that 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.

(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.

In **SUCCESSION CAUSE 74 OF 2001 IN THE MATTER OF THE ESTATE OF SABASTIAN NELAKALA (DECEASED)** Justice J.K. Serگون in setting aside proceedings where parties had been given directions to proceed by filing affidavits. Here directions had been given assuming that **Section 68(2)** of law of succession had been complied with. The judge observed that the objector had not been served with a notice to file an answer to the petition and a cross petition as required by **Section 68(2) of law of succession Act (Cap 160)** and as such he proceeded to set aside the said proceedings and requested the Deputy Registrar to issue the said notice to the objector in compliance with **Section 68(2) Law of succession act (Cap 160)**.

Upon perusal of the court records the parties herein proceeded with the hearing of the objection without the objector filling an answer to the application and a cross petition. It is also evident that the objector was never served with a notice by the honorable court to file a reply to the application. In **RE ESTATE OF STEPHANO M'MUGAMBI M'NDIERA (DECEASED) [2008] EKLR** it was held that it is only after the above process is exhausted that the court shall proceed to determine the dispute.

The said application proceeded prematurely. The said proceedings are hereby struck out and the Deputy Registrar instructed to issue a notice to the objector to file a reply and cross petition in compliance with **Section 68(2) of the Law of succession act (Cap 160)** and generally fully comply with Rule 17 of the Probate and Administration Rules.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>th</sup> DAY OF APRIL, 2013.**

**W. M. MUSYOKA**  
**JUDGE**