

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

SUCCESSION CAUSE 39 OF 2005

IN THE MATTER OF THE ESTATE OF:

HENRY MASESE OBWANGI DECEASED

AND

PETER MOSE AYUGE APPLICANT

VERSUS

JULIUS MACHENGE MASESE OBJECTOR

RULING

This ruling is in respect of a preliminary objection to making of a Grant. The objection was filed on 27th January, 2006. The applicant applied for a Grant of Letters of Administration of the deceased's estate on 15th March, 2005. A notice was published in the Kenya Gazette on 15th April 2005. The usual period of 30 days for lodging objections was given. No objection was received within the stipulated period. The court proceeded to issue the Grant to the applicant on 20th May, 2005.

On 17th November, 2005 summons for confirmations of the Grant were filed. The preliminary objection stated that the objection is incompetent and bad in law as it was filed out of time, the Grant having already been issued. Mr. Ombachi for the applicant urged the court to strike it out.

Mr. Makori for the objector submitted that the applicant/petitioner was not a beneficiary of the deceased's estate but he applied for the Grant, knowing that the objector, who had a right to apply for the same was unwell. He urged the court to disallow the preliminary objection since the applicant is a stranger to the deceased's estate.

I have considered the above arguments. It cannot be disputed that the objection was filed too late, the Grant having been issued, just before the same was confirmed. At this stage, I cannot consider whether the applicant had capacity to apply for the Grant or not. If that is the case, the objector can proceed to apply for revocation or annulment of the Grant. Such an application is not yet time barred but the objection filed is unsustainable and is hereby struck out with costs to the applicant.

DATED, SIGNED AND DELIVERED AT KISII THIS 16th DAY OF June, 2009.

D. MUSINGA

JUDGE.