

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE 398 OF 2004

IN THE MATTER OF THE ESTATE OF STEPHANO M'MUGAMBI M'NDIERA (DECEASED)

STANLEY GITONGA PETITIONER

VERSUS

ZAKAYO GIKUTHA M'MUGAMBI OBJECTOR

RULING

The petitioner herein, Stanley Gitonga brought the present cause for a grant of representation in respect of the deceased, Stephano M'Mugambi M'Ndiera (the deceased), who was survived by a widow, two sons and two daughters. One son, Elijah Kiru is deceased but survived by a widow, Minnie Kajuju. One of the surviving sons, Zakayo Gikutha M'Mugambi has filed the instant objection to the making of the grant on the grounds that being the eldest son he ought to have filed the cause and that the same was filed secretly.

In reply to the objection, the petitioner maintains that he properly brought the cause as the objector is not trusted by the beneficiaries. He also has denied filing the cause secretly.

I have considered these averments as well as oral submissions. There is no doubt or dispute that the objector is a son to the deceased. That he is older to the petitioner. The deceased left only one parcel of land, NTIMA/NTAKIRA/314 measuring approximately 2.00Ha to be shared between the seven (7) listed beneficiaries.

The petition for a grant was filed on 30th August 2004. Under section 67 (1) of the Law of Succession Act no grant of representation, other than a limited grant for collecting and preserving the assets, can be made until a notice of the application for the grant has been published, inviting objections thereto to be made known to the court within a specified period of not less than thirty (30) days from the date of the publication and the specified period having expired. The normal way of publishing the notice of the application is by way of the Kenya Gazette or exhibiting it conspicuously in the court-house and also in any other manner as may be directed by the court.

An objection therefore can only be lodged within the period specified by the notice or such longer period as may be allowed by the court. Once a notice of objection has been lodged the objector is required to file an answer to the application and a cross petition. It is only after the above process is exhausted that the court shall proceed to determine the dispute.

I have deliberately set out the procedure of lodging an objection and what follows to demonstrate that this application has been brought prematurely. A notice of the grant had not been published pursuant to the provisions of section 67 of the Law of Succession Act or Rule 17 of the Probate and Administration Rules. Secondly, the dispute could only be set down for hearing after the filing by the objector, both the answer to the application and a cross-petition.

In a nutshell, the objection fails for being premature and is struck out. The process must commence with the petitioner publishing the notice as explained above. The objector will then have a proper opportunity

to object and take all the other steps in line with the law. I make no orders as to costs of this objection.

Dated and delivered at Meru this 3rd day of October 2008.

W. OUKO

JUDGE