

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 478 of 2002

IN THE MATTER OF FREDRICK WAWERU MBUGUA(Deceased)

And

AGNES NYAWIRA GITHANGAPETITIONER

Versus

MARGARET WANGARE MWAURA.....OBJECTOR

RULING

This Succession Cause was listed on 11th May, 2006 before me for directions under Rule 17 of the Probate and Administration Rules, but when the cause was called out Mr. Gatumuta counsel for the Objector said that the cause was for hearing of the objection and not for directions.

When I checked the file to see whether the objection could be heard, I could not see the Objection although I could see the Answer to Petition and the application by way of Cross-petition filed by the objector.

Mr. Gatumuta agreed, after also checking the court case file in the court, that there was no objection in the court file but suggested that hearing of the objection could still go on since the other two documents, namely answer to petition and cross petition had been filed. Counsel for the Respondent/Petitioner, Mr. Muyunda, could not agree. He pointed out that answer to the petition and an application by way of cross petition could not stand in the absence of an objection and that therefore in the circumstances of this case, the two documents be struck out.

I think counsel for the Respondent is right. It is the filing of the objection which opens the way to the filing of answer to petition as well as the filing of an application by way of cross petition. But the filing of the objection is not done anyhowly. It is regulated and rules 7 (4) and 17 (1) of the Probate and Administration Rules have to be complied with. The period normally allowed is 30 days from the date of publication of the petition in the Kenya Gazette. An objection has to be filed within that period, although by leave of the Court, the time for filing may be enlarged.

With respect to the petition in this cause, it was published in the Kenya gazette dated 13th December, 2002, a period of three years and five months up to 11th May, 2006 when I was handling the question of the objection in this succession cause. No evidence that the objection was indeed filed. Yet an answer to a petition and an application by way of cross petition can only be filed after the objection upon which they are based has been filed. Since the answer to petition and the application by way of cross petition were filed herein without the objection having been filed, the said answer to petition and application by way of cross petition have no basis and are therefore improper and incompetent and the two documents are hereby struck out with costs of the proceedings so far relating to objection purported to be under Rule 17 of the Probate and Administration Rules, to the Respondent/Petitioner.

Dated at Nyeri this 29th day of May, 2006.

J. M. KHAMONI

JUDGE