



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT MERU**

Succession Cause 4 of 1994

**IN THE MATTER OF THE ESTATE OF M'RWITO MANGA ALIAS CHABARI
MANGA (DECEASED)**

PHILLIS KAJUJU PETITIONER

VERSUS

JEDIEL MUTHURI OBJECTOR

RULING OF THE COURT

The petitioner herein, Phyllis Kajuju filed the application for grant of letters of administration intestate on 7.1.94 in her capacity as the widow of the deceased. The application was duly gazetted in the Kenya Gazette vide gazette Notice No. 2174 of 22.4.94. The grant was issued to the petitioner on 15.12.94. By an application dated 28.6.1995, the petitioner sought to have the grant of letters of administration issued to her on 15.12.1994 confirmed.

The application for confirmation of grant was opposed by the objector herein on the ground that the objector had on 18.7.1995 served a copy of another application on the petitioner seeking to be heard on his objection proceedings. From the record, the objector filed his objection to the making of a grant on the 13.5.94. He filed those proceedings in his capacity as son of the deceased. The objector contended that the deceased was survived by two wives, namely the petitioner herein and one Charity Njiru Rwito, who the objector averred had been omitted from the succession proceedings by the petitioner. Further, the objector contended that the petitioner did not seek and obtain the consent of other beneficiaries to the estate of the deceased before the filing of the application for grant.

The objector also filed his cross-application for grant of Letters of Administration. In that application, the objector set out the following as survivors of the deceased's estate:-

1. Phyllis Kajuju Rwito - widow.
2. Charity Njiru Rwito - widow
3. Nchugune Beatrice - daughter (married)
4. Jediel Muthuri Rwito - son
5. Patrick Mutai Rwito - son
6. Harriet Nkuene - daughter (married)

7. Cecilia Gaiti - daughter

The property left by the deceased was land parcel No. ABOGETA/UPPERCHURE/ 424 measuring 7.77 acres.

According to the petitioner, the deceased was survived by the following persons:-

1. Phyllis Kajuju - widow
2. Nchugune Beatrice - daughter
3. Harriet Nkuene - daughter

Mr. Murango Mwenda filed a preliminary objection on a point of law on 31.3.2003 to the objectors petition on the ground that the objector did not comply with the provisions of sections 68 and 69 of the Law of Succession Act, Cap 160 (the Act) and Rule 17 of the Probate and Administration (P & A Rules) Rules. It is this preliminary objection that was canvassed before me on 30.5.2005.

It was contended for the petitioner that the objector failed to file his objection within the period stipulated in the Kenya Gazette advertising the succession cause. The cause herein was advertised on 22.4.1994 and the objector should therefore have filed his objection proceedings on or before 22.5.1994. Mr. Mwenda also contended that the objector did not comply with section 69 of the Act since he did not file an answer to the petition and cross-petition application for cross petition.

He submitted that though the objector filed his Notice of Objection on 13.5.1994, there was no answer to the petition either at the time of filing the notice or subsequent thereto. It was the further contention of Mr. Mwenda on behalf of the petitioner that this omission on the part of the objector was fatal to his cause. He urged the court to find that in the absence of the answer which is the equivalent of a defence in ordinary civil suits, then the petitioner's application for grant of letters of administration remained unchallenged.

In response, Mr. Obiri advocate for the objector submitted that the mere fact that the objector did not file an answer to the petition was not fatal to his cause. It was his view that the cross-petition filed by the objector on 13.5.1994 addressed all the pertinent issues regarding the petitioner's application. Mr. Obiri urged the court to exercise its wide discretion under section 70 of the Act and allow the objector to regularize the anomaly so that all the issues raised by both the petitioner and objector can be addressed.

Section 68 of the Act provides as follows:-

“68(1) 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 sub-section (1) the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.”

Section 69(1) of the Act provides as follows:-

“69(1) where a notice of objection has been lodged under sub-section (1) of section 68 but no answer or no cross-petition has been filed as required under sub-section (2) of that section, a grant may be made in accordance with the original application.”

The facts herein are not in dispute. Though the intending objector filed the notice of objection and a cross-application no answer was filed by the objector. Mr. Obiri has submitted that this does not matter or alternatively that this court should exercise its discretion under section 70 of the Act and allow the objector time to file his answer to the petition out of time. The provisions of section 68(1) are clear. If

either the answer or cross-petition is not filed by the objector then the court is under an obligation to make the grant in accordance with the original application. No sufficient cause has been shown by the objector as to why the answer to the petition was never filed. It has also not been shown by the objector why no steps were taken to file an application under Rule 17(2) of the P&A Rules for extension of time within which to file the answer to the petition. It would seem to me that the objector has been indolent in dealing with this matter.

Even after he was put on notice by the petitioner when the latter filed and served him with the notice of preliminary objection way back in March 2003, the objector continued to sleep and only seemed to wake up to the gravity of the matter during the hearing of the preliminary objection. In the circumstances of this case therefore, the court cannot be expected to come to the aid of an indolent litigant. This litigation must come to an end.

In the result, I uphold the Preliminary Objection by the petitioner. The objector's objection proceedings are thus struck out with costs to the petitioner. I proceed to allow the petitioners application dated 28.6.1995 for confirmation of the grant issued to her on 15.12.1994. Costs for the application for confirmation of grant shall be in the cause. It is so ordered.

Dated and delivered at Meru this day of 27th day of July 2005.

RUTH N. SITATI

JUDGE

27.7.2005