



REPUBLIC OF KENYA



**In re Estate of Makori Onunga Okeyo (Deceased) (Probate & Administration  
E017 of 2023) [2025] KEHC 5228 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5228 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PROBATE & ADMINISTRATION E017 OF 2023**

**WA OKWANY, J**

**APRIL 24, 2025**

**IN THE MATTER OF THE ESTATE OF MAKORI ONUNGA OKEYO (DECEASED)**

**BETWEEN**

**HELLEN GESARE AYOTI ..... 1<sup>ST</sup> PETITIONER**

**JOYCE KEMUNTO MAKORI ..... 2<sup>ND</sup> PETITIONER**

**ROSE MORANGI MAKORI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**EVANS OSEKO MAKORI ..... 1<sup>ST</sup> PROTESTOR**

**RICHARD BONKO MAKORI ..... 2<sup>ND</sup> PROTESTOR**

**SAMWEL OSIAGO MAKORI ..... 3<sup>RD</sup> PROTESTOR**

**RULING**

1. The deceased herein, Makori Onunga Okeyo, died intestate on 16<sup>th</sup> July 2020 leaving behind 14 dependents/beneficiaries and an Estate comprising of:-
  - a. Land parcel No. Matutu Settlement Scheme/1212 – 1.16Ha
  - b. Land parcel No. Matutu Settlement Scheme/767- 14.575Ha
2. Grant of Letters of Administration Intestate was issued to Hellen Gesare Ayoti, Joyce Kemunto Makori and Rose Morangi Makori on 30<sup>th</sup> January 2024. The Petitioners/Administrators subsequently filed Summons for Confirmation of Grant dated 24<sup>th</sup> June 2024 together with a Consent for Confirmation of Grant and an affidavit sworn by the Administrators.



3. The Objectors filed an Affidavit of Protest in response to the Application for Confirmation of Grant together with a Cross-Petition dated 20<sup>th</sup> September 2024. The Protestors seek orders to be appointed as the administrators of the deceased's estate.
4. The Objectors averred that; Land Parcel No. Matutu Settlement Scheme/767 was already subdivided into 8 parcels and registered in the names of individuals some of whom were beneficiaries of the deceased, a fact that was well known to the Petitioners and that the said land was therefore inexistent and could not form part of the Estate of the deceased; that the Petitioners were actuated by malice in leaving out some of the beneficiaries of the deceased in the distribution and that the consent form had not been signed by all the beneficiaries; that the sons of the deceased, Samwel Osiago Makori, Richard Bogonko Makori, Geoffrey Nyangau Makori and Evans Oseko Makori had been excluded from the process of distribution of the Estate and that the beneficiaries who allegedly signed the Consent for Distribution did not actually do so. They further averred that the administrators are not suitable to be appointed as administrators of the Estate as they do not live on the said properties which would make it difficult for the Estate to be properly and smoothly administered.
5. In response to the Objection, the Petitioners/Administrators filed an affidavit sworn by Joyce Kemunto Makori who avers that the Protestors were hostile towards them since the death of their father; that they went against a family resolution to give a portion of the Estate comprising of the tea plantation to their sister Trusilla Moraa Makori and evicted her from land parcel No. Matutu Settlement Scheme/1212; that land parcel No. Matutu Settlement Scheme/767 had never been subdivided into the alleged 8 portions and that the Protestors including Samwel Osiago had sold of portions of the said land after fraudulently obtaining titles, which titles were cancelled by the Land Registrar; and that no beneficiary had been excluded from the distribution of the estate and that the Protestors were driven by greed and intended to disinherit the deceased's daughters.
6. The Petitioners/Administrators also filed a Preliminary Objection dated 1<sup>st</sup> October 2024 in which they listed the following grounds: -
  1. The Objection to the making of a Grant offends Section 68 of the *Law of Succession Act* Rule 17 (1) of the Probate and Administration Rules hence this Court lacks the jurisdiction to entertain it.
  2. The Objection to making of a Grant is misconceived, bad in law and incompetent, the same having been taken, drawn and filed without leave of the court long after the Grant of Letters of Administration had been made to the Petitioners.
  3. The Objection is frivolous, vexatious or is otherwise an abuse of the process of the court which should be struck out with costs.
7. Parties were directed to dispose of the preliminary objection by way of written submissions.

#### **The Petitioners/ Administrators' Submissions**

8. The Petitioners submitted that the Objectors filed their Affidavit of Protest and Cross-Petition 9 months after the Grant of Letters of Administration had been issued yet there was a published Gazette Notice on 15<sup>th</sup> December 2023 which granted them 30 days to file any objection to the issuance of Grant. They argued that the delay in filing the objection offends the provisions of Section 68 of the *Law of Succession Act* and Rule 17 (1) of the Probate and Administration Rules thereby depriving the court of the jurisdiction to determine the matter. Reference was made to the case *Mukhisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA, 696* where the nature of a Preliminary Objection was explained.



9. it was submitted that the law on making of an Objection in a Succession Cause was provided under Sections 67-69 of the *Law of Succession Act* and Rule 17 (1) of the Probate and Administration Rules. According to the Petitioners, an objection to the making of a Grant can only be done before the issuance of a Grant and within the timelines set out in the published Notice. They urged the Court to dismiss the Affidavit of Protest and Cross-Petition and proceed to confirm the Grant.

### **The Protestors' Submissions**

10. The Protestors submitted that the Affidavit of Protest and the Cross-Petition do not offend the provisions of *Law of Succession Act* and the Probate and Administration Rules are only applicable where there is an objection to the issuance of Grant of Letters of Administration. They argued that their protest only relates to the proposed mode of distribution as stated in the Application for confirmation of the Grant under Rule 40 (6), not its issuance. Reference was made to the case of In Re Estate of David Atabachi Amonyela (Deceased) Succession Cause No. 1329 of 2012 (2020) eKLR where the court distinguished between the processes of objecting to the confirmation of Grant under Rule 40(6) and objecting to the making of a Grant under Section 60 and Rule 17(1) for the argument that the Court has the jurisdiction to hear and determine the protest.

### **Analysis and Determination**

11. I have carefully considered the Notice of Preliminary Objection (PO) and the parties' rival arguments. I find that the main issue for determination is whether the PO is merited. What constitutes a PO was aptly elucidated in the locus classicus case of Mukhisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA, 696 thus: -

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

12. The procedure for making a Grant is provided for under the *Law of Succession Act* at Sections 67-69 as follows: -

#### Procedure on Grants

##### 67. Notice of application for grant

1. No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.
2. A notice under subsection (1) shall be exhibited conspicuously in the court-house, and also published in such other manner as the court directs.

##### 68. Objections to application



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 such notice as aforesaid, 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.
69. Procedure after notice and objections
1. Where a notice of objection has been lodged under subsection (1) of section 68, but no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.
  2. Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.
13. The Probate and Administration Rules also provide for the procedure of objecting to a grant as follows:
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17. Objections, answers and cross-applications
1. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.
  2. A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
  3. ....
  4. -----
  5. -----
  6. If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross- application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.
  7. -----
  8. -----
  9. -----
  10. -----



11. So long as an objection which has been lodged has not been withdrawn pursuant to subrule (10) no grant shall be made by any registry to the estate of the deceased prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act.
  12. -----
  13. -----
  14. No registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased: Provided that an objection shall not operate to invalidate a grant made not less than twenty-one days after the period specified for inviting objections under section 67 of the Act but before knowledge or notification of the lodging of the objection is received by the registrar making the grant.....
14. It is clear that where any party objects to the making of a Grant in the name of the proposed Administrators, they must lodge such an Application by filing an Objection in the prescribed form within the stipulated 30-days period. Once this is done, such a party will be directed by the court to file an Answer to the Application for issuance of Grant which they object to, together with a Cross-Application proposing to whom the Grant should be issued. This procedure is what is envisioned by Section 67 and 68 above.
  15. In the present case, the Objector's clarified that they were not opposed to the issuance of Grant of Letters of Administration to the Administrators. They were however not in agreement with the manner in which the Administrators had proposed to distribute the Estate of the deceased in the Application for confirmation of Grant. It is however noteworthy that the Cross-Petition and Affidavit of Protest were in the form of an objection to the issuance of Grant to the Administrators on the basis that the Petitioners did not live on the said properties and were therefore incapable of ensuring a smooth distribution process.
  16. My finding is that the Objection to the making and issuance of grant is misconceived having been filed outside the stipulated 30 days' period after Petition for was published. In the event that the objectors were not able to file their objection within the stipulated period, they ought to have sought the leave of the Court to object to the said Grant.
  17. I find that, to the extent that the objection to the issuance of the grant was filed outside the stipulated period, the Preliminary Objection is merited. I find that since the Grant was already issued to the Petitioners, the Protestors had no basis for making their Objection.
  18. My above finding notwithstanding and considering the fact that the Protestors clarified that they were only opposed to the proposed mode of distribution, it is my considered view the Protestors may ventilate their concerns, through their Affidavit of Protest, during the hearing of the Summons for Confirmation of Grant.
  19. In the final analysis I find merit in the Preliminary Objection dated 1<sup>st</sup> October 2024 and hereby uphold it and dismiss the Cross-Petition. Each party shall bear its own costs in this Application.
  20. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**W. A. OKWANY**



**JUDGE**

