



In re the Estate of Kombo Jumaa Mzee (Deceased) (Succession Cause E074 of 2022) [2025] KEHC 11387 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E074 OF 2022**

G MUTAI, J

JULY 25, 2025

IN THE MATTER OF THE ESTATE OF KOMBO JUMAA MZEE (DECEASED)

BETWEEN

**MOHAMED KOMBO JUMA 1ST PETITIONER
HASSAN KOMBO JUMA 2ND PETITIONER
JUMA KOMBO JUMA 3RD PETITIONER
FATUMA KOMBO JUMA 4TH PETITIONER**

AND

KHIFA ABUBAKAR ABDALLA RESPONDENT

RULING

1. The application before the court is the Chamber Summons dated 4th April 2025. The same is brought under Rule 17(2) of the *Probate & Administration Rules*, 1980. *Vide* the said application, the respondent/applicant, Khifa Abubakar Abdalla, seeks the following orders: -
 - a. That this Honourable court be pleased to extend the time for lodging of an objection to the making of a grant to the Estate of the late Kombo Jumaa Mzee who died on 10th January 2022;
 - b. That the Intended Objector be allowed to file an objection to the making of the grant in favour of Mohamed Kombo Juma; and
 - c. That the Costs of this Application be provided for.
2. The respondent/applicant, whom I shall hereafter refer to as “Khifa”, contends in her grounds in support of the application, as well as in the supporting affidavit that she swore on 4th April 2025, that she is the sole surviving widow of the deceased. She deposed that the petitioners, on the other hand, are the children of the deceased. Khifa stated that the petitioners filed the instant petition without



consulting her. She further stated that her property had been included as part of the deceased's estate. The respondent/applicant averred that she wasn't properly advised of her right to object to the making of a grant by her previous advocates, hence the delay in filing this application. Lastly, she contended that the delay on her part wasn't inordinate, nor, in the circumstances of the case, inexcusable. In support of her application, she attached her certificate of marriage, which shows that she got married to the deceased, Kombo Jumaa Mzee, on 25th February 2011.

3. The application is opposed. Mohamed Kombo Juma filed, through his advocates, a replying affidavit sworn on 15th May 2025, vide which he denied that the instant petition was filed without notice to the respondent/applicant. He stated that a citation was issued to Khifa on 16th September 2022. He contended that Khifa participated in the proceedings from 2022 and that she never contested or raised any objections to the grant being issued to him and Hassan.
4. Mr Mohamed Kombo Juma further stated that the grant was issued in respect of this estate on the 16th day of January 2023. Pursuant to the said grant, he and Hassan Kombo Juma were duly appointed as administrators. Mr Mohamed contended that more than two years passed from the time the said grant was issued without any complaint. He stated that the present advocate of the respondent/applicant was appointed on 28th October 2023, which period was almost 2 years to the date the application was filed. Given the circumstances, he urged that the application was therefore an afterthought.
5. The deponent stated that they weren't trying to frustrate or deny the respondent/applicant her rights. To the contrary, it was stated that she had been named as a beneficiary in the Summons for Confirmation of the grant that had been filed herein and was awaiting determination.
6. The application was canvassed through oral submissions on 22nd May 2025. I shall state briefly below the summary of the parties' submissions.
7. Mr Mutubia, the learned counsel for Khifa, urged that they were seeking to file an objection out of time and that they approached the Court through Rule 17(2) of the *Probate & Administration Rules, 1980*. He averred that although the grant was issued to Mohamed Kombo Juma and Hassan Kombo Juma, the latter had since died, leaving Mohamed as the sole administrator. He averred that there had been an intention to have two administrators. With Hassan deceased, it made sense to appoint her client as the co-administrator in his place. Mr Mutubia contended that no beneficiary would be prejudiced if that were done. He urged that his client be made a co-administrator, as she was the sole surviving widow of the deceased.
8. The petitioners opposed the application. Their counsel, Mr Kamanzi, submitted that there was no evidence to suggest that the estate was intended to have two administrators at all times. Learned counsel urged that under section 81 of the *Law of Succession Act*, the death of a co-administrator rendered the remaining administrator the sole administrator of the estate concerned. There was therefore no lacuna that needed to be filled. By dint of the said provision, the death of Hassan made Mohamed the sole administrator of the estate of the deceased. He further submitted that the estate would have required two administrators had there been a continuing trust, something that wasn't the case in this matter.
9. Mr Kamanzi denied that Khifa was kept in the dark regarding the succession proceedings herein. He urged that she was aware of this matter, and she acquiesced to the proceedings by not taking any action to oppose them. He averred that she was served with the Citation to take or refuse the grant and, for reasons known to her, took no action. He prayed that the application be dismissed, as it was without merit and intended to delay the finalization of the matter.
10. I have considered the application, the supporting affidavit and its annexure, as well as the replying affidavit and its annexures. I have also taken into account the submissions made by the parties before me



on 22nd May 2025. It would appear to me that the sole issue I am called upon to determine is whether there are sufficient reasons to warrant this Court giving leave to the respondent/applicant to file an objection out of time. In my view, this will necessitate an examination of the record.

11. From the record, it is evident that the petition for letters of administration intestate in respect of the estate of the deceased was filed on 12th September 2022. In the affidavit in support of the petition, sworn on the said date by Hassan and Mohamed, Khifa was indicated as being the widow of the deceased. This is set out in black letters in paragraph 4(e) thereof. The extent of the estate of the deceased was set out in paragraph 6 of the said affidavit.
12. The grant was issued on 16th January 2023. The question then is whether an objection can be filed after the grant has been issued. This is key; if no objection may be filed after the grant is issued, then there can be no basis to grant leave to a party to do so. That would be illogical.
13. My understanding of Rule 17 of the *Probate & Administration Rules* is that an objection may only be raised before the issuance of the grant, and it is for that reason that the said Rule refers to a grant applied for by another person. Section 68 of the *Law of Succession Act* is clear that objection applications are in respect of the application for a grant. The rule would appear to me to be inapplicable to a situation such as this, where the grant has already been issued.
14. I am guided by what W. M. Musyoka wrote in his book, “Law of Succession.” At page 322, the author, a Judge of the High Court, stated as follows: -

“Objection proceedings commenced after the making of the grant are incompetent and so are those that initiated before the publication of the notice under section 67 and Rule 7(4).”
15. I am further guided by the decision of Khamoni, J in *re Estate of Kiarie Mangece* [2002] KEHC 1212 (KLR) where the learned Judge stated as follows: -

“It is clear from the documents then filed that the Objector was filing those papers as if he was at the stage before a grant of letters of administration was issued. That is why he was asking to be joined as a co-administrator without also asking for the revocation of the grant. Without asking for the revocation of the grant which had been issued to the Administrator on 25th February 2000, I do not see how the Objector hoped to become a co-administrator while the grant already issued to Ruth Njambi Kiarie alone remained unrevoked. That mistake by the Objector therefore stands as an obstacle on the way taken by the Objector towards the realization of his desire to become a coadministrator.”
16. Since the intended objection is meant to be brought after the grant has been issued, the application, in essence, seeks to achieve something that the Rules do not permit. The application is doomed ab initio. For that reason, the application is without merit.
17. I must point out that Khifa is not without merit. Since there is a summons for confirmation of the grant, she could file a Protest under Rule 40 (6) of the *Probate and Administration Rules*, 1980. On the other hand, if she is still aggrieved by the making of the grant, she may file summons for revocation or annulment of the grant under section 76 of the *Law of Succession Act*, relying on any of the grounds stated therein.
18. From the foregoing, it is evident that I have not found merit in the application. The same is dismissed.
19. As this is a succession matter between close family members, parties will bear their costs.
20. It is so ordered.



DATED AND SIGNED IN MOMBASA, THIS 25TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Mutubia, for the Respondent/Applicant;

Mr Kamanzi, for the Petitioners/Respondents; and

Arthur - Court Assistant.

