



**In re Estate of Ganeshlal Pusharam Galot (Deceased) (Succession Cause E096 of 2023) [2024] KEHC 5560 (KLR) (Family) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5560 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE E096 OF 2023**  
**PM NYAUNDI, J**  
**MAY 3, 2024**  
**IN THE MATTER OF THE ESTATE OF GANESHLAL**  
**PUSHARAM GALOT (DECEASED)**

**JUDGMENT**

1. This judgment is in relation to Objection to making of Grant dated 24<sup>th</sup> November 2023, which is supported by Affidavit in support sworn on even date. The Objector in filing the Objection is essentially challenging the inclusion of certain properties in the Will of the deceased as it is his assertion that the said assets do not belong to the deceased and therefore he does not have the capacity to bequeath them to the Beneficiaries as proposed.
2. It is not disputed that the properties in the will are the subject of active litigation and the Petitioner indeed has a Limited Grant of Letters Administration Ad Litem issued on 19<sup>th</sup> July 2023 allow him to ‘Defend the Deceased’s interests in HCC No. 55 of 2022, HCC No. 298 OF 2009, HCC No. 2054 of 1993 and ELC No. 2247 OF 2007.
3. It is also common ground that the petitioner is the son of the deceased and the Objector is his brother. The Petition for Grant of Probate was gazetted on 8<sup>th</sup> September 2023 and the Objector lodged his Objection on 24<sup>th</sup> November 2023 with leave of the Court.
4. Sections 68 and 69 of the *Law of Succession Act* provide the procedure for lodging an Objection. Section 69 in particular anticipates that an Objector would either lodge an answer or a cross Petition to the Petition objected against. The purpose of the Objection proceedings is to determine preliminary issues such as who is the right person to apply for the grant.
5. As stated by Kamau J. *IN Re Estate of Johnstone Ochwang’i Moronge* [2022] eKLR
  - (18) The effect of Sections 68 (2) and 69 (1) of the *Law of Succession Act* is that the objection proceedings in which no answer and cross-petition are filed are incomplete and the court may proceed to make a grant to the Petitioner.



6. The above provisions read alongside rule 17(15) of the *Probate And Administration Rules* which provides

Where an objector in his Objection, answer and cross- application expressly limits his objection to the making of the grant applied for to a challenge to the due execution of the alleged written or oral will and similarly restricts his right to call or cross- examine witnesses solely in regard to matters which might tend to disprove or prove such execution, he shall not be required to pay the costs or expenses of any other party to the proceedings unless the Court before which the hearing takes place id of the opinion that there was no reasonable ground for challenging the execution.

Make it clear that what I have before me is an incomplete objection.

7. In making my final orders I am guided by Section 47 of the *Law of Succession Act* which provides

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

8. I am further guided by rule 73 of the Probate and Administration Rules that provides

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

9. By virtue of Article 159 of *the Constitution* of Kenya 2010, the Court is required in exercising judicial authority to pursue substantive justice. As observed above it is not in contest that the Petitioner is the son to the deceased and that some of the assets in the will are in fact not the free property of the deceased as there is live litigation that seeks to determine ownership.

10. In the circumstances I will make the following orders

- a. The Objection is dismissed
- b. The Grant of Probate to issue to the Petitioner herein
- c. The Execution of the will in relation to the assets whose ownership is challenged to await the finalization of the cases in Court.
- d. Each party will bear their own costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
3<sup>RD</sup> DAY OF MAY, 2024.**

**P. NYAUNDI**

**JUDGE**

In the presence of:

Court Assistant Fardosa

