



**In re Estate of Magerer Arap Chepkulul (Deceased) (Succession Cause E102 of 2022) [2024] KEHC 5375 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5375 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E102 OF 2022**

**SM MOHOCHI, J**

**MAY 2, 2024**

**IN THE MATTER OF THE ESTATE OF MAGERER ARAP CHEPKULUL  
(DECEASED)**

**BETWEEN**

**JONAH KATAM CHEPKULUL ..... 1<sup>ST</sup> OBJECTOR**

**JOSEPH KIPNGETICH TOWETT ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**KIPKURUI A KATAM ..... 1<sup>ST</sup> ADMINISTRATOR**

**NANCY CHERONO CHEPKULUL ..... 2<sup>ND</sup> ADMINISTRATOR**

**ALICE CHEPKULUL ..... 3<sup>RD</sup> ADMINISTRATOR**

**RULING**

**Introduction**

1. The deceased herein died intestate on 26<sup>th</sup> October, 2018 and Letters of Administration were issued Kikorir A. Katam, Nancy Cheronon Chepkulul and Alice Chepkurui Chepkulul in the Grant was made on 5<sup>th</sup> December, 2022.
2. The Objectors/Respondents on 4<sup>th</sup> April, 2023 filed an Objection to Making of Grant, Affidavit in Protest to the Confirmation of Grant sworn by Jonah Katam Chepkulul, Petition by Way of Cross Application for Grant and the Answer to Petition of Grant all dated 27<sup>th</sup> March 2023. Citing *inter alia* that they were never consulted in the process of making of the Grant, intermeddling allegations as well as their house being left out of the administration process.



## Preliminary Objection

3. The Applicants vide a Notice of Preliminary Objection dated and filed on 5<sup>th</sup> April, 2022 sought dismissal and striking off, of the Respondent's Notice of Objection to Making of Grant, Affidavit of Protest, Petition by way of Cross Application of Grant and Answer to Petition for Grant all dated 27<sup>th</sup> May, 2023 for being irregular, incompetent and improper against the contemplation of Sections 67(1), 68(1) & (2) and 69(1) of the Law of Succession Act as read together with Rules 7(4), 17(1), (2), (4), (5) and (6) and Rule 40(6) of the Probate and Administration Rules on the grounds reproduced in verbatim that:-
  - i. Section 67(1) of the Law of Succession Act, Cap 160 and Rule 17(1) of the Probate and Administration Rules 1980, couched in mandatory terms do not contemplate an Intended Objector, (Respondent's herein) filing an objection Notice outside the period specified in the Notice which in this case is thirty (30) days from the date of publication in the Kenya Gazette, which was published on 22<sup>nd</sup> November, 2022
  - ii. No leave of Court for extension of time, to file the Notice of Objection outside the specified 30-day notice period, has been sought by the Intended Objectors contrary to Section 68(1) of the Law of Succession Act, Cap 160 as read together with Rule 17(2) of the Probate and Administration Rules, 1980.
  - iii. The Procedure for placing the Objection herein before this Honourable Court was irregular and against the contemplation of Rule 17(6) of the Probate and Administration Rules and that there is nothing on record to show that the Deputy Registrar complied with the provisions of Rule 17(4) and (5) of the Probate and Administration Rules before placing of the objection before this Honourable Court as envisaged in the stated Rule 17(6)
  - iv. No valid Notice of Objection has been lodged under Section 68(1) and no valid answer to Cross Application has been filed as required under Section 68(2), ergo, valid Grant was issued on 5<sup>th</sup> December, 2022 in accordance with Section 69(1) of the Law of Succession Act Cap 160.
  - v. The Affidavit of Protest dated 27<sup>th</sup> March, 2023 and filed by the Objectors is irregular, premature, improper and incompetent since it has been placed before this Honourable Court contrary to the provisions of Rule 40(6) of the Probate and Administration Rules, 1980 which contemplates a proposed confirmation of Grant having been filed prior. Essentially, absent summons for confirmation of Grant having been filed there's nothing to protest.
4. The Court on 15<sup>th</sup> February, 2024 directed that the application be canvassed by way of Written submissions. The Applicants filed written submissions dated and filed on 13<sup>th</sup> February, 2024 and the Respondent's submissions dated 21<sup>st</sup> February, 2024 were filed on 22<sup>nd</sup> February, 2024.

## Applicant's Submissions

5. The Applicant submitted on two issues. On the First issue, the Applicants submitted that the Respondents have not complied with the law and ought to have filed their Objections to Petitions for Making a Grant on or before 4<sup>th</sup> December, 2022. That is, thirty (30) days from the publication as provided for under Section 67(1) of the Law of Succession Act and Rule 7(4) of the Probate and Administration Rules.
6. Further the Applicants submitted that an Objector ought to have filed the Notice of Objection thirty (30) days from the date of publication in the Kenya Gazette and in the event that the objection is not



filed an Objector ought to first seek extension of time in concurrence with Section 68(1). Reliance was placed *In re Estate of Agness Ogola Akoth* (Deceased) [2016] eKLR.

7. The Applicants further contended that as to the laid-out procedures there is nothing on record to show that there was a formal application filed for consideration nor compliance by the Deputy Registrar as stipulated in Rule 17(4), (5) and (6) of the *Probate and Administration Rules*. Therefore, the Notice of Objection of Making a Grant, Petition by way of cross Application and Answer to Petition for a Grant be struck out for non-compliance.
8. Secondly that the Affidavit of Protest is irregular, premature and incompetent as there are no Summons for Confirmation of Grant filed therefore nothing to Protest against. Reliance was placed in the decision in *Gerald Ombosa Liona & 4 Others v Ernest Shipochi Liona* (2020) eKLR where the Court set out the process of handling confirmation Applications as envisaged in Section 71 of the *Law of Succession Act* and Rule 40(6) of the *Probate and Administration Rules*. It was the Applicant's submission that before an Affidavit of Protest is filed, Summons for Confirmation of Grant ought to have been served on all beneficiaries of the deceased. In the absence of want of form, the matter ought to proceed as if there was no objection.

### Respondent's Submissions

9. The Respondent on the other hand submitted on two issues. For starters, as to whether their pleadings are properly before Court; according to the Respondents, although the pleadings were filed outside the 30 days' period after Gazettement and leave was not sought, their application raises triable issues of intermeddling by the 3<sup>rd</sup> Administrator and that the Applicants are members of the 5<sup>th</sup> house which is not represented by an administrator which according to them is standard practice.
10. Secondly on whether the pleadings should be struck out, the Respondents submitted that the power to strike out pleadings should be exercised sparingly as striking out pleadings is a harsh move. They placed reliance in the case of *Livestock Research Organization v Leah Okoko and Joseph Owuor Gogo* Civil Appeal No 36A of 2021 [2022] KEHC 3302 (KLR). Further that Article 159 invites the Court to deliver justice without undue regard to procedural technicalities while also appreciating the overriding objectives as provided for in the civil procedure. Reliance was also placed in the case of *Stephen Boro Gitiba v Family Finance Building Society and 3 Others* (2009) eKLR and urged Court to find no merit in the Preliminary Objection and dismiss it with costs.

### Analysis and Determination

11. The procedure for objection is addressed in Sections 67, 68 and 69 of the *Law of Succession Act* Cap 150 (Laws of Kenya). Rule 17 of the *Probate and Administration Rules* details how the objection is to be lodged at the registry, how the petitioners and principal registrar are to be notified of the objection, the filing of answer and cross-petition by the objector, the extension of time by the registrar where an application in that regard has been made and determined by the Court of the petition and cross-petition. A person may object to issuance of letters of administration in respect of a deceased's estate within the period stipulated in the Kenya Gazette.
12. Section 67 (1) of the *Law of Succession Act* provides that: -

“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 the 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  
(emphasis Court).”

13. Further, Section 68 of the *Law of Succession* provides that: -
  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.
14. Section 69 of the *Law of Succession Act* further stipulates that: -
  1. Where a notice of objection has been lodged under subsection (1) of section 68, or 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.”
15. It is clear to this Court the Cause herein was advertised in the Kenya Gazette. Suffice it to state that the Petition for Grant of Letters of Administration Intestate has been issued herein. In essence the filing of the Objection as contemplated in Section 68 of the Laws of Succession Act was done outside the prescribed period and is thus untenable.
16. This Court notes that the 2<sup>nd</sup> family and all its beneficiaries in which the Applicants belong was included in the succession and that it is only in this family where all of them save for Patrick Kiprono Sang who signed the consent on behalf of Stephen Towett -Deceased.
17. The Court equally notes the allegations of intermeddling that calls for attention of the Court.
18. Having found the Objection and cross-petition to have been made outside the statutory period provided and thus being irregular, I am inclined to uphold the Notice of Preliminary Objection dated on 5<sup>th</sup> April, 2022.
19. The Objector/Respondent’s Notice of Objection to Making of Grant, Affidavit of Protest, Petition by way of Cross Application of Grant and Answer to Petition for Grant all dated 27<sup>th</sup> May, 2023 is accordingly dismissed and set-aside.
20. The Dismissal and striking-out the Objection and Cross-Petition shall not in any way prejudice the Rights of the beneficiaries from the 2<sup>nd</sup> Family and this Court in exercise of its inherent jurisdiction directs as follows;
  - i. The Probate and Administration shall proceed by the personal representatives filing, within the next (30) thirty days, the appropriate summons for confirmation of Grant made on 5<sup>th</sup> December, 2022 with their proposed mode of distribution.
  - ii. Then Applicants herein are deemed as protestors, to challenge the confirmation of grant by laying their alternative proposed mode of distribution. To file an affidavit of protest within forty-five (45) days from today.
  - iii. The Protest aforesaid shall be heard concurrently with the summons for confirmation by way of viva voce evidence.



iv. A mention to fix a hearing date to be held within the next sixty (60) days from today.

It is so ordered

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 2<sup>ND</sup> DAY OF MAY 2024.**

.....

**MOHOCHI S. M.**

**JUDGE**

