



REPUBLIC OF KENYA



**In re Estate of William Thomas Oburu (Deceased) (Succession Cause
E151 of 2024) [2024] KEHC 12881 (KLR) (Family) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12881 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E151 OF 2024
PM NYAUNDI, J
OCTOBER 11, 2024
IN THE MATTER OF THE ESTATE OF WILLIAM THOMAS OMBAKA
OBURU (DECEASED)**

RULING

1. Following the death of William Thomas Ombaka Oburu (the deceased) on 2nd August 2023, the Petitioners herein Juliet Atieno Oluoch And Feisal Oluoch Wakil lodged a Petition for Grant of Letters of Administration Intestate on the 13th February 2024. The Petitioners are spouse and brother in law to the deceased, the 2nd Petitioner is a brother to the 1st Petitioner.
2. Notice of the Petition was subsequently published in the Kenya Gazette on the 25th March 2024. In response to the Notice in the Kenya Gazette, Paul Isaya Wasonga Oburu (an elder brother to the deceased) filed the Objection to making of grant dated 8th April 2024 that is the subject of this ruling.
3. The Objection is premised that the objector ranks in priority to the 2nd Petitioner as he is a brother whereas the 2nd Petitioner is a brother in law and only related to the deceased by affinity. It is the submission of the Objector that the law grants priority to those related to the deceased by consanguinity. The objector is categorical that no grant can issue in the absence of the express consent of the blood relatives of the deceased who rank in priority over the 2nd Petitioner. The Objector contends that he is best placed to protect the interests of the minor.
4. As a preliminary point, the Petitioners submit that the Objection is fatally defective for not complying with the mandatory provisions Section 67, 68 and 69 of the *Law of Succession Act* and Rules 17(1), (2) and (6) of the Probate and Administration Rules. Reference is made to the decisions in Re Estate of Johnstone Ochwang'i Moronge (Deceased) [2022] eKLR, Re Estate of Gaitanao Atsianzale alias Atsianzale Shikomongoma (Deceased) [2021] Eklr; Lucas Mboya & Another v Alakie Mboya [2011] eKLR; Jason Werimo Onyango v Patrick Onyango Sakwa [2019] eKLR.



5. It is the Petitioners' submission that the failure to comply with the laid down process is fatal to the objection and cannot be cured by Article 159(2)(d) of *the Constitution* of Kenya, 2010 and reliance placed on the decision in Re Estate of Agnes Ogola Akoth (Deceased) [2016] eKLR
6. On failure to grant notice to the Objector, the Petitioners rely on the decision in Jason Werimo Onyango v Patrick Onyango Sakwa (Supra) and submit that they were under no obligation to notify the Objector as the deceased was survived by a widow and children.

Analysis And Objection

7. Having considered the pleadings herein, along with the submissions filed, authorities and relevant law and authorities cited I discern the following as the issues for determination as preliminary issue
 - a. Whether the Objection filed herein is competent?
 - b. What if any are the consequential orders the Court should grant emanating from the answer to a) above?
 - c. Who should pay costs?
8. On the first issue the procedure for lodging an Objection is set out under Sections 68 and 69 of the *Law of Succession Act* and rule 17 of the Probate and Administration rules. The Court in re Estate of Johnstone Ochwang'i Moronge (Deceased) [2022] eKLR aptly expounded the law. In the absence of a Petition and Cross Petition, the Objection proceedings are incomplete. This premature presentation of the Objection is not curable by Article 159(2)(d) of *the Constitution* of Kenya.
9. I find further the Section 69 cannot kick in unless Section 68(2) of the *Law of Succession Act* is complied with.
10. Having found that the Objection is not ripe for determination, I direct that the matter be returned to the Deputy Registrar to ensure that Section 68 (2) is complied so that the matter is determined on its merits, this is what I understand to be the import of the above cited decision in Re Estate of Johnstone Ochwang'i Moronge.
11. Accordingly, the matter will be mentioned on 22nd October 2024 before the Deputy Registrar to confirm compliance with Section 68(2) and for taking of further directions.
12. The Objector will meet the Costs of the Application.

It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 11TH DAY OF OCTOBER, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Fardosa Court Assistant

Kimani Advocate for Petitioner

Mrs. Oduor h/b for Ochieng Oduol together with Mr. Kaula Advocate for Objector

