



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Quintus Ekessa (Deceased) (Succession Cause
E011 of 2020) [2023] KEHC 19035 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE E011 OF 2020**

WM MUSYOKA, J

JUNE 19, 2023

IN THE MATTER OF THE ESTATE OF DR. QUINTUS EKESSA (DECEASED)

RULING

1. After the deceased herein died on November 9, 2019, representation to his estate was sought by Annetriza Ekessa, Julie Wendy Ekessa, Ronald Ikamar Ekessa and Diana Akisa Ekessa, in their capacities as children of the deceased. I shall as refer to the 4, collectively, as the petitioners. Their cause was published in the Kenya Gazette of January 29, 2021, as gazette notice number 711.
2. It would appear that Monica Wambui Njung'e, who I shall refer hereto as the objector, raised an objection to the petition. A ruling was delivered herein, on December 1, 2021, dismissing the said objection, on grounds that the same was premature and incompetent, for failing to comply with sections 67, 68 and 69 of the *Law of Succession Act*, Cap 160, Laws of Kenya.
3. The objector then filed another objection, dated January 25, 2022, simultaneously with an answer to the petition, a petition by way of cross-application, and an affidavit in support. There are several other affidavits, by diverse individuals, sworn in support of the objection. The case by the objector is that she was a surviving spouse of the deceased. There are counter affidavits by other individuals, contesting the alleged marriage of the objector to the deceased.
4. Ideally, objections are disposed by way of oral evidence, for that is the best way of proving marriage alleged to have been contracted under customary law or to have had arisen from prolonged cohabitation. The parties opted to canvass the matter by way of written submissions, based on the affidavits on record.
5. Be that as it may. What bothers me is that despite Karanjah J bringing the attention of the objector to sections 67, 68 and 69 of the *Law of Succession Act*, which govern objections, she does not appear to have paid any heed to those provisions, and especially section 67, which, Karanjah J reproduced in his ruling of December 1, 2021, and which I hereby reproduce once more. It says:

“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.”
6. That provision invites objections to be filed within a period to be indicated in the publication of the cause, which should not be less than 30 days. The cause herein was published in the Kenya Gazette of January 29, 2021. The time indicated was 30 days. The objection that I am being invited to determine is dated January 25, 2022, and was filed herein on January 27, 2022. It was filed nearly 1 year after the publication of the cause, and way outside the 30 days that was indicated in the gazette notice. Clearly, the said objection was time-barred, and incompetent.
7. Can the same be salvaged? Yes. Section 68(1) of the *Law of Succession Act* empowers the court to allow filing of objections outside the period indicated in the notice. The provision states:

“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) ...”
8. Section 68(1) opens a window for a person who wishes to object, but finds themselves out of time. The court can allow them to file the same outside the period given in the gazette notice. The gazette notice, in this case, appeared on January 29, 2021. The question is whether the objector got leave from court, allowing her to file her objection outside the 30 days given in that notice. I see that the ruling of Karanjah J of December 1, 2021 was delivered 10 months after the publication, but it did not allow the objector to lodge an objection outside the 30 days. I have not come across an application by the objector for leave to file the objection outside the 30 days, and I have not seen any order of this court allowing the same. When Ms. Oduor, Advocate for the objector, appeared before me on May 2, 2023, for the hearing of the objection, she did not address me on that issue, instead she asked me to give her a date for ruling on the objection. The law does give the objector a leeway, to sort out any anomaly arising from a late filing, but the objector did not take advantage of that, and I am left with an incompetent objection, filed out of time, without of leave of court.
9. What should I do with it? Since it was filed out of time, and no leave was sought or obtained, it is incompetent, and it should suffer the fate of filings which do not comply with the law, and in respect of which the parties fail to avail themselves of the advantages allowed them by the law. All is not lost for the objector. She would still have a chance to present her case to the court at confirmation of grant, where she is at liberty to file a protest. She also has other remedies.
10. As the objection herein is incompetent, I shall have to proceed in accordance with section 69(1) of the *Law of Succession Act*, which states:

“69. Procedure after notice and objections



(1) Where a notice of objection has been lodged under subsection (1) of section 68, but no answer but 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) ...”

11. As the objection herein is incompetent, for the reasons given above, I shall make a grant in terms of the original application. By original application, the law means the petition. There would be no challenge to that petition, where the objection is rendered incompetent.

12. The final orders are:

- a. That the objection proceedings herein, comprised in the notice of objection, answer to petition, petition by way of cross-application and supporting affidavit, are incompetent for the reasons given above, and are hereby struck out;
- b. That I hereby appoint the petitioners, Annetriza Ekessa, Julie Wendy Ekessa, Ronald Ikamar Ekessa and Diana Akisa Ekessa, administrators of the estate herein, and a grant of letters of administration intestate shall issue to them accordingly;
- c. That the administrators shall file for confirmation of their grant within 45 days, which they shall serve upon the objector, Monica Wambui Njung'e, who shall be at liberty to file an affidavit of protest;
- d. That the matter shall be mentioned after 45 days for compliance and further directions;
- e. That each party shall bear their own costs; and
- f. That any party aggrieved has leave of 30 days to challenge the orders made herein at the Court of Appeal.

13. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 19TH DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Ms. Oduor, instructed by Odede & Oduor, Advocates for the objector.

Ms. Odumbe, instructed by Odumbe & Odumbe, Advocates for the petitioners.

