



**In re Estate of John Njoroge Kariuki (Deceased) (Succession Cause E1484 of 2020)  
[2023] KEHC 24439 (KLR) (Family) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24439 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1484 OF 2020  
EKO OGOLA, J  
SEPTEMBER 18, 2023  
IN THE MATTER OF THE ESTATE OF JOHN NJOROGE KARIUKI (DECEASED)**

**BETWEEN**

**JOHN NJUNGE KARIUKI ..... PETITIONER**

**AND**

**BEATRICE WAIRIMU ..... 1<sup>ST</sup> OBJECTOR**

**HILLARY KAMAU KARIUKI ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. John Njoroge Kariuki died intestate on 2<sup>nd</sup> May 2020. He was survived by four sons and two daughters namely; Ann Wanjiku, Nicholas Njama; Hillary Kamau; Michael Muchiri; John Njunge Kariuki (the petitioner); and Alice Waithira. On record is a Consent to the making of letters of Administration to a person of equal or lesser priority dated 3<sup>rd</sup> December 2020. Ann Wanjiku Ndirangu, Michael Muchiri Kariuki, and Alice Waithira Kariuki, all children of the deceased consented to the appointment of the Petitioner as administrator of the deceased estate.
2. On 23<sup>rd</sup> April 2021, the Petitioner petitioned this Court for a grant of letters of administration intestate. The application was published in the Kenya Gazette on 30<sup>th</sup> July 2021 under [Notice No. 7657](#). Thereafter on 7<sup>th</sup> September 2021, the Petitioner was issued with Grant of Letters of Administration Intestate.
3. The 1<sup>st</sup> objector is the Widow of Kevin Njoroge Kariuki (deceased), the late son of the deceased. She filed an Affidavit of Protest against the confirmation of the grant dated 27<sup>th</sup> July 2022. The crux of her objection to the appointment of the Petitioner as administrator is that the Petitioner has deliberately failed or refused to include her as one of the beneficiaries of the deceased estate and instead, he has



been putting the name of the late Kevin Njoroge Kariuki. According to her, the Petitioner will proceed to distribute the estate in a manner that is not agreeable to all the beneficiaries. The Objector further alleged that the Petitioner had come to this court with unclean hands.

4. The 2<sup>nd</sup> objector filed an Objection to making of grant dated 27<sup>th</sup> August 2021. He averred that the Petitioner is not truthful and that he has concealed material facts to the effect that the deceased had during his lifetime disowned him and strictly ordered that he ought not to inherit from the estate. It is for this reason that he objects to the appointment of the Petitioner as the administrator of the deceased estate.
5. The law on objecting to an application for a grant of representation is Section 68 of the [Law of Succession Act](#). It stipulates as follows:-
  - “(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 the notice, 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.”
6. In this instant cause the period specified by the notice, thus the [Kenya Gazette Notice No. 7657](#) of 30<sup>th</sup> July 2021 was thirty (30) days which days expired on 30<sup>th</sup> August 2021. The 1<sup>st</sup> Objector filed her Objection on 27<sup>th</sup> July 2022, whilst the 2<sup>nd</sup> Objector filed his objection on 27<sup>th</sup> August 2021. This period can only be extended upon an application to the Court. In the instant case, no application was made by the 1<sup>st</sup> Objector and no orders were made by the court granting a longer period beyond the 30 days as per published Kenya Gazette. The filing of an objection by the 1<sup>st</sup> Objector after the period given in the published notice had lapsed and receipt of the objection by the registry cannot suffice. In the foregoing, I dismiss the 1<sup>st</sup> Objector’s Objection dated 27<sup>th</sup> July 2022.
7. As earlier stated, the notice in the [Kenya Gazette Notice No. 7657](#) dated 30<sup>th</sup> July 2021 was to expire on 30<sup>th</sup> August 2021. The 2<sup>nd</sup> Objector filed his Objection on 27<sup>th</sup> August 2021. This was within the prescribed time. Section 69 of the [Law of Succession Act](#) provides that once an objection has been duly filed, the court shall proceed to determine the dispute. The 2<sup>nd</sup> Objector has alleged that the deceased had during his lifetime disowned the Petitioner and strictly ordered that he ought not to inherit from the estate. These allegations have not been corroborated and remain mere allegations that cannot bar the Petitioner from being issued with the grants of letters of administration of the deceased estate. 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.”
8. The effect of Sections 68(2) and 69(1) of the [Law of Succession Act](#) is that 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. The procedure of how the Objection to a grant of letters of administration is to be made is given in Rule 17 of the *Probate and Administration Rules*. Rule 17(6) specifically states that:-

“ 6. If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.”

9. It is clear from Rule 17(6) that the intervention of the court will only come in after an objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself. The 2<sup>nd</sup> Objector failed to prosecute his objection by filing an answer to the Petition and a cross-Petition for consideration by this court. Therefore, the 2<sup>nd</sup> Objector's Objection is hereby dismissed.
10. It must however be appreciated that the law of Succession is crafted in such a manner that the obtaining of the grant is not an end to the aggrieved party's rights. One can challenge the grant by seeking its revocation or annulment or even file a protest to the mode of distribution.
11. From the foregoing, I make the following orders:-
  - a. The 1<sup>st</sup> Objector's Affidavit of Protest against the confirmation of the grant dated 27<sup>th</sup> July 2022 is hereby dismissed.
  - b. The 2<sup>nd</sup> Objector's Objection to making of grant dated 27<sup>th</sup> August 2021 is hereby dismissed.
  - c. The Petition dated 23<sup>rd</sup> April 2021 is hereby allowed.
  - d. The Petitioner is hereby appointed as the administrator of the Estate of John Njoroge Kariuki (deceased).
  - e. The Grant of Letters of Administration dated 7<sup>th</sup> September 2021 is hereby declared as duly issued.
  - f. Cost be in the cause

It is so Ordered.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2023**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Ms. Mwandabo for the Petitioner

Mr. Olaka for the 1<sup>st</sup> & 2<sup>nd</sup> Objector

Gisiele Muthoni - Court Assistant

