



In re Estate of Alloys Gekonge Tumbo - Oeri (Deceased) (Succession Cause E715 of 2021) [2023] KEHC 24889 (KLR) (Family) (6 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E715 OF 2021

PM NYAUNDI, J

OCTOBER 6, 2023

**IN THE MATTER OF: THE ESTATE OF PROF.
ALLOYS GEKONGE TUMBO - OERI(DECEASED)**

BETWEEN

**ROSE PHOEBE TUMBO-OERI 1ST PETITIONER
OLIVIA KERUBO TUMBO-OERI 2ND PETITIONER
GEORGE OMBOGA TUMBO-OERI 3RD PETITIONER**

AND

**TESSY WAMATUBA 1ST OBJECTOR
WILSON MUTSAMI MULIRU 2ND OBJECTOR**

JUDGMENT

1. Vide Notice of Motion dated 12th July 2021 presented under Section 3(3), Section 3(5), 26,29,32,40,41,42,45,67,68,76 of the *Law of Succession Act* 2001, Cap 160 of the Laws of Kenya and rules 35,36,37,38,63 *Probate and Administration Rules*, Section 3 of the *Civil Procedure Act* Cap 21, Order 40 rules 1, 2 and 4, *Civil Procedure Rules* (Subsidiary Legislation) seeking orders that appear on the face of the Application.
2. The Application was opposed by the Petitioner by Replying Affidavit sworn on 27th September 2021. In paragraph 5 of that Affidavit the Petitioner contends that the Application is not grounded in law and that the Sections of the Law of Succession quoted on the face of the Notice of Motion do not provide for the instant application.



3. The matter proceeded to hearing by way of viva voce evidence but before I delve into the merits of the Objection, I am compelled to consider the competence of the Application.
4. I am struck by the Kitchen sink approach adopted by the Objector both in the provisions of the law under which the Application is said to be presented and the orders sought.
5. The most glaring of which is that the Application is said to be presented under both Section 68 and 76 of the Law Section Act. Section 68 relates to Objections to Application for grant of representation, while Section 76 relates to Revocation of Grant. It should be clear that one cannot object to the making of a grant and seek revocation of the grant in the same Application.
6. It is at paragraph 3 in the submissions dated 21st June 2023 filed by the Objector that I am able to decipher that this application is an ‘objection to issuance of Grant’.
7. On perusal of the file I find that Letters of Administration Intestate were granted to the Petitioners on 1st September 2021. The pertinent question therefore is whether the Application as presented is competent.
8. Section 68 provides;
 - Objections to Application
 1. Notice of any objection to an application for a grant of representation shall be lodged with the Court, in such format as may be prescribed
 2. within the period specified by such notice as aforesaid, or such longer period as the court may allow
 3. Where notice of objection has been lodged under sub -section 1, the court shall give notice to the objector to file an answer to the application and a cross-petition application within a specified period (Emphasis Supplied)
9. Rule 17(1) of the probate and administration rules provides
 1. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has already been applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection. (Emphasis supplied)
10. It is evident therefore that the procedure of lodging and processing an objection is clearly set out in Section 68 of the Law of Succession Act and Rule 17 of the Probate and Administration rules. It is clearly not by notice of Motion as presented by the Objectors herein.
11. As noted in paragraph 7 above the grant herein issued on the 1st September 2021. The question I pose is whether a person can file an objection after the Grant has issued as that will determine whether or not I should proceed to consider the Objection on its merits.
12. This same question was posed by Hon Justice J.A Makau in re estate of Agnes Ogolas Akoth (Deceased) [2016] eKLR, in which he observed



- [14] In the instant case the objection was filed when grant had already been made. The delay in filing of the objection of 4 years is inordinate and unexplainable. The objector is objecting to the making of the grant after it has already been made and I find that the objection has already been overtaken by events. The court cannot stop what has already passed. The law of Succession is crafted in such a manner that the obtaining of the grant is not an end to 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.
13. I agree wholly with the finding of the Judge. A plain reading of the relevant provisions cited above reveals that an Objection is filed to challenge the Petition or Application for grant. The Court cannot consider an objection 'to the making of a grant' after the grant has been made.
14. As pointed out in the referenced decision the avenues available to the Applicants at this stage would be to apply for revocation or annulment of the grant or file a protest to the mode of distribution.
15. On account of the foregoing I find that the Application before Court is incompetent and defective and the same is struck out. The Application was overtaken by events and there is no valid objection for this Court to adjudicate or determine.
16. Each party will bear their own costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
6TH DAY OF OCTOBER 2023.**

P. NYAUNDI

JUDGE

In the presence;

Sylvia Court Assistant

