



REPUBLIC OF KENYA



In re Estate of Monica Muthoni Kagume alias Monica Muthoni Ndirangu (Deceased) (Probate & Administration E004 of 2023) [2024] KEHC 13639 (KLR) (4 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION E004 OF 2023
MA ODERO, J
NOVEMBER 4, 2024
IN THE ESTATE OF MONICA MUTHONI KAGUME
ALIAS MONICA MUTHONI NDIRANGU (DECEASED)**

RULING

1. Before this Court for determination is the Summons for Extension of time dated 15th May 2023 by which the Applicant/Objectors seek the following orders.
 - “(1) That the time within which to file the objection to making of the Grant be extended.
 - (2) That the costs of this Application be costs in the cause.”
2. The application was premised upon Section 68 of the *Law of Succession Act* Cap 160 Laws of Kenya and rule 17 (1) of the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by Johnson Ndumia Ndirangu the 2nd Applicant/Objector.
3. The Respondent/Petitioners opposed the application through the Replying Affidavit dated 26th July 2023 sworn by Isaiah Gaura Wanjau Kagume the 2nd Respondent/Petitioner.
4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 15th September 2023 whilst the Respondents relied upon their submissions dated 5th July 2024.

Background

5. This succession cause relates to the estate of the late Monica Muthoni Ndirangu (hereinafter ‘the Deceased’) who died intestate on 8th March 2021 in Nyeri County. A copy of the Death Certificate Serial Number 1048212 was filed in Court on 10th February 2023.
6. The Deceased was married to one Michael Guara Kagume who died on 20th August 2013 thereby predeceasing her. The Deceased had no biological children of her own.



7. Following the demise of the Deceased the Respondents who were her step-children applied for Grant of letters of Administration Intestate through the Petition dated 26th January 2023. No objection was lodged within the required time and thus the Respondents were issued with the Grant dated 24th April 2023.
8. However before the Grant could be confirmed the Objectors who are the siblings of the Deceased filed this application seeking an extension of time within which to file their objection to the making of the Grant.
9. The Objectors assert that the Deceased was not survived by any spouse and/or biological children. The objectors insist that they rank in priority over the Respondents in applying for Grant of representation to the estate of the Deceased.
10. The Objectors accuse the Respondents of obtaining the grant fraudulently using an irregularly acquired Death Certificate. That the Respondents deliberately failed to include and/or inform the Objectors that they had petitioned for a Grant.
11. The Objectors state that they only came to knowledge of this Succession course sometime in April 2023 after the Gazette Notice had been published and after the thirty (30) day period allowed for filing Objections had lapsed.
12. The objectors state that the Respondents told the Court half-truths and failed to disclose all facts pertaining to the Deceased in order to disinherit the Applicants. That the issuance of the Grant to the Respondents prejudices the Applicants as they will be denied access to the estate of their late sister. Accordingly the Applicants pray that the time for filing their objection be extended.
13. The Respondents vehemently opposed this application for extension of time. The Respondents insist that the Deceased got married to their late father and was therefore their step-mother. That the Deceased moved into the Respondents family home following the demise of their mother and played the role of mother and provider.
14. The Respondents assert that they rank in priority over the Applicants and that they are the genuine beneficiaries to the estate of the Deceased which they aver was substantially acquired during the subsistence of her marriage to their late father.
15. The Respondents deny having deliberately side-lined the Applicants and state that the petition was publicized in the Kenya Gazette, thus notifying the public of the existence of the succession cause. That in any event they were under no obligation to notify the Applicants of their petition.
16. Finally the Respondents state that the Applicants were not dependants of the Deceased and cannot be deemed to be beneficiaries of her estate.
They therefore urge the court to dismiss this application.

Analysis and Determination

17. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
18. Section 68 of the *Law of Succession Act* provides as follows:

“ 68



- (1) Notice of any objection to an application for a grant of representation shall be lodged with the court, as 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 sub-section (1), the court shall give notice to the Objector to file an answer to the application and a cross-application within a specified period.”

19. Rule 17(1) of the *Probate and Administration Rules* provides for the procedure to be followed in filing an objection.

20. Rule 67 of the *Probate and Administration Rules* provides for enlargement of time as follows:-

“Where any period is fixed or granted by these Rules or by an order of the Court for the doing of any act or thing the court upon request or of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired.” [own emphasis]

21. It is therefore clear that the Rules to allow for the court to enlarge the period of time within which to file an objection.

22. I note that the Petition was published in the Kenya Gazette of 24th March 2023. The purpose of such publication is to allow any member of the public who has an interest/stake in the estate to take note and to act accordingly. The Applicants did not file their objection within the specified period.

23. I note that a Grant of Representation has already been issued to the Respondents. However that Grant is yet to be confirmed.

24. I have considered the grounds advanced by the Applicants in opposing issuance of the Grant. They have alleged fraud, concealment of material facts, failure to include the Applicants facts etc. These constitute grounds which can also be cited in a summons to revoke a Grant for which there is no time limit.

25. Section 76 of the *Law of Succession Act* provides that

“A grant of representations whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application any interested party or of its own motion
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a.” [own emphasis]

26. In my view this application seeking to enlarge time was unnecessary.

All the Applicants needed to do was to file a Summons seeking to revoke the Grant already issued to the Respondents. I find that the Applicants have not advanced persuasive enough reasons to warrant this courts exercise of its discretion to expand the time to file an objection in their favour. I therefore dismiss the Notice of Motion dated 15th May 2023.



27. Section 47 of the *Law of Succession Act* vests courts with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

28. Likewise, Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these *Rules* shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

29. The law provides the Court with powers to make such orders as may necessary to safeguard the estate and to protect the rights of beneficiaries.

30. I direct that the Applicants file and serve within thirty (30) days a Summons for revocation of the Grant issued to the Respondents. Once this is done the Respondents will have 30 days to respond to that Summons. Thereafter the court will give directions on hearing. It is so ordered. Costs of this application to be met by the Applicants.

DATED IN NYERI THIS 4TH DAY OF NOVEMBER 2024

MAUREEN A. ODERO

JUDGE

