



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 13 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE ENOCK IMBUYE KUFWAFWA - (DECEASED)

JUDITH MAKUNGU IMBUYE (DECEASED).....ADMINISTRATOR

AND

RUTH IMBUYE & 3 OTHERS.....APPLICANTS

VERSES

BETTY MUKITE SICHAGI.....1ST OBJECTOR

RICK MASINDE IMBUYE.....2ND OBJECTOR

DENIS MUCHUMA IMBUYE.....3RD OBJECTOR

ROSALINE KHAVETSA.....4TH OBJECTOR

VIOLET INJETE IMBUYE.....5TH OBJECTOR

RULING

1. By their application dated **31st October 2019**, the Objectors /Applicants prayed for the following reliefs;

(a) Leave be granted to the 2nd to 5th Objectors to file their own individual affidavits further to the affidavit filed by the 1st objector.

(b) Leave be granted to the objectors to file a supplementary affidavit to be sworn by MOSES OKUMU SICHAGI.

(c) The Objectors be at liberty to apply to this court for further directions and orders for purposes of meeting the end of justice.

2. The application is supported by the affidavit of **RICK MASINDE IMBUYE** sworn on the same date. The 4th and the 5th Objectors have also filed supporting affidavits.

3. They have each deponed that they are the children to the deceased herein and that they did not swear the necessary affidavits to indicate how the deceased had been supporting them prior to his demise. They went ahead to attached various annexures to their affidavits including school fees receipts as well as Mpesa payments from Safaricom.

4. They argue that the said documents were inadvertently left behind as they lived far from each other and their mother has kept on moving house. They stated that the admission of the said documents shall help them in establishing their dependency upon their deceased father.

5. The respondent **Ruth Imbuye** has filed a Replying Affidavit dated 13th January, 2020 in which she has deponed that the said application ought to be disallowed for the simple reason that it does not comply with the provisions of the Succession Act. She said that the applicants are not objectors in this matter and they cannot therefore imposed themselves by filing affidavits. In effect they did not file any objection or cross petition herein.

6. The respondent stated that the Applicants application is an afterthought since it came after the objector had testified and cross examined. That the said Moses Okumu had filed the affidavits without the leave of the court.

7. The parties have filed submissions as directed by the court. The court has perused the same and does not see the need to reproduce them here. The court has equally perused the cited authorities attached.

8. The first issue which must be established is whether the applicants, specifically the 2nd to the 5th have locus in this matter. In other words are they objectors in this matter. ?

9. The objection proceedings herein dated 21st January, 2019 was filed by the 1st Objector claiming to be the wife of the deceased and the 2nd to 5th Applicants are her children. There is no other objection on record by themselves or least of all by the said MOSES OKUMU SICHANGI.

10. In the absence of the objection proceedings the applicants have then failed to comply with Sections 68 and 69 of the Law of Succession Act. The same provides that;

“Objections to application

68. (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) *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.*

Procedure after notice and objections

69. (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. “*

11. What then is the fate of the applicants? The application is incompetent. However, prima facie they seemed to have a claim in the estate noting that the objector claims to be their mother as indicated in her objection herein. They also claim that they are the children to the deceased.

12. The provisions of Article 159 of the Constitution may come to their aid. The same must be read with Rule 73 of the Probate and Administration Rules which grants this court the latitude to ensure that the ends of justice are met. Rule 73 states 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.”

13. All is not lost to the respondents since they still have room to respond and object to any evidence to the contrary. The court shall also have the opportunity to have the estate litigated once and for all and any deserving party given a chance to be heard which is a cardinal principle of rule of law and natural justice.

14. The application is otherwise dismissed. The applicants are hereby granted leave to file further affidavits within the next 14 days from the date herein and serve in support of the objection proceedings herein by the 1st objector.

15. The Respondent Ruth Imbuye be at liberty to Respondent within the next 14 days after service.

16. Costs shall be in the cause.

Dated signed and delivered in open court at Kitale this 8th day of April, 2020.

H. K. CHEMITEI

JUDGE

8/04/2020