



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER 601 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE CHARLES KIPROTICH RONO (DECEASED)

PATRICIA JEMUTAI MOROGO.....1ST PETITIONER/RESPONDENT

AMOS KIPRUTO MOROGO.....2ND PETITIONER/RESPONDENT

VERSUS

VERONICA CHEMWI KIPNGETICH...INTENDED OBJECTOR/APPLICANT

RULING

1. The application before court is dated 8th April, 2014. The orders sought are;

1. That this court be pleased to extend the time limited to lodge objection to the making of a grant in respect of the estate herein and/or grant leave to the intended objector to issue notice of objection to the making of the grant out of time.

2. That costs of this application be provided for.

2. The application is premised on the grounds;

1. THAT by a letter dated 6th March 2014, the Assistant Administrator General A.K. SANG wrote to the firm of SIGLAI JOEL & CO. ADVOCATES to the effect that he had received a grant of letters of administration intestate in respect of the estate of CHARLES KIPROTICH RONO DECEASED appointing a widow as the co-administrator of the estate.

2. THAT the said administrator general gave the said firm a 14 days ultimatum to serve him with objection proceedings or court order otherwise the said officer threatened to release money in his possession to the appointed administrators.

3. THAT the said officer had vide a Kenya Gazette Notice No. 13701 dated 13th September, 2013 invited all persons having any claims against or interests in the estate of the deceased person requiring them to prove such claims or interests before you within two (2) months from the date of the gazette.

4. THAT he also stated that after thirty (30) days from the date of the Gazette Notice, he intended to apply to the High Court at Nakuru for representation of the estate of the person named in the second column of the schedules thereto namely, CHARLES KIPROTICH RONO (DECEASED).

5. THAT the intended objector made a statutory declaration in her capacity as a mother of the deceased and a dependant which was served upon the said officer which was received but for reasons best known to the officer, he never acknowledged but instead ignored it.

6. THAT the said officer apparently did not apply to the High Court as intended despite the Administration Cause No. 279/13.

7. THAT the said firm of advocates promptly replied to the said letter vide one dated 27th March, 2014.

8. THAT upon investigation at the High Court Probate and Administration Registry, It was discovered that a grant was issued to PATRICIA JEMUTAI MOROGO and AMOS KIPRUTO MOROGO on 2nd January, 2014 in the instant cause.

9. THAT as such the period of thirty days to lodge any notices of objection had since expired and the intending objector was hood

wink by the said officer and could have had notice inviting objections in time as she thought the said administration cause was enough to determine the estate.

10. THAT the intending objector is a mother to the deceased officer and therefore a defendant under Section 29 of the LAW OF SUCCESSION ACT CHAPTER 160 LAWS OF KENYA yet her name was omitted in the P & A 5 FORM and her consent was not sought to the making of grant for no apparent reason or excuse whatsoever.

11. THAT there several assets of capital assets comprising the estate herein which are conspicuously omitted in the said P & A 5 Form namely, the shares at the Police Sacco at Kshs. 243,000/=, NHIF dues at Kshs. 244,000/=, NSSF dues at Kshs. 200,000/=, Insurance Kshs. 1,000,000/= and deductions from his payslip at Kshs. 200,000/= which stand to be lost not unless they are included as forming part of the deceased estate herein.

12. THAT this court has wide and unfettered discretion under the law to extend the time limited to bring objection notices to proceedings.

13. THAT it is mete and just that the leave sought be allowed for the ends of justice.

3. It is also supported by the supporting affidavit of Veronica Chemwi Kipngetch sworn on the 8th April, 2014.

4. The applicant's case is that she was unable to lodge an objection in time as engagements between her advocates and the Administrator General, Public Trustee only to learn that a grant had been issued to Patricia Jemutai Morogo and Amos Kipruto Morogo.

5. The applicant orders that she is the biological mother of the deceased. She was not included in the Probate and Administration form filed yet she was a defendant of the deceased.

6. The application is opposed and in a replying affidavit, Patricia Jemutai Morogo has stated that the requisite gazette notice was advertised on 8th November, 2013.

7. The application is accused of lethargy in pursuit of her alleged interest in the estate.

8. I have considered the application, the supporting grounds and affidavit. I have had due regard to the replying affidavit.

9. **Section 68** of the **Law of Succession Act** provides;

“S. 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 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.”

10. **Rule 17(1)** of the **Probate and Administration Rules** provides;

“R.17. (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 been already 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 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.”

11. The Court therefore has the jurisdiction and powers to extend time for the lodging of an objection.

12. On the material placed before the Court, I am persuaded that the extension sought is merited as the applicant may have been hoodwinked by the engagements between his counsel and the office of the Administrator General that the matter would be handled through that office and she became oblivious of the action taken by the respondents.

13. I am alive to the fact that the cause was gazette as provided by the law.

14. I am, however, persuaded that notwithstanding the gazette and lack of response from the applicant, the applicant should be allowed to have her day in Court.

15. No prejudice will be suffered by the respondents and I proceed to exercise the Court's discretion in favour of the applicant and allow the application.

16. I make the following orders;

1. The application dated 8th April, 2014 is allowed in terms of prayer 1.

2. The applicant is to lodge an objection within thirty (30) days.

3. Each party to bear its own costs.

Dated and Signed at Nakuru this 11th day of July, 2019.

A. K. NDUNG'U

JUDGE