



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 92 OF 2015

**IN THE MATTER OF: THE ESTATE OF MONIQUE ANGELINE AUGUSTINE GRIGNON
(DECEASED)**

AND

**IN THE MATTER OF: PETITION FOR LETTERS OF ADMINISTRATION PETER NYIRO
MGANGA**

AND SUZANNE CHARTIER,

(APPLICANT)

AND

**FRANCESCA REGAIOLLI
OBJECTOR**

RULING

The late Monique Grignon died on 20th March, 2015 at Tonlon in France. Suzanne Chartier and Peter Nyiro petitioned this court for Probate of Written Will. A grant was issued on 3rd December, 2015. On the same date 3rd December, 2015 the Objector, Francesca Regaiolli filed her objection to the making of the grant claiming ownership to one of the properties, namely House Number Q7 situate on Plot Number 587, Malindi A-G Complex on 17th December, 2015. The petitioner filed summons for the confirmation of the grant before the expiry of six (6) months. The objector filed her grounds of objection to the confirmation of the grant on 26th February 2016.

Mr. Kilonzo, counsel for the objector, submitted that the objection is grounded on the fact that House number Q7 does not belong to the deceased. The property was transferred by the deceased to the objector on 27th December, 2014. When the current petition was filed, the petitioners were aware that there is civil suit number 104 of 2015 before the Environment and Land Court. Counsel maintains that the objector has no objection to the confirmation of the grant in relation to the residuary estate.

Miss Chartier, one of the executors of the deceased's estate, opposed the objection. The executor maintains that the objection does not conform to form number 10. The law gives time frame within which to raise objection. The objector had 30 days to file an affidavit but has not. The objection has not been served on the petitioners. The executor agrees that there is civil suit number 104 of 2015 pending

before the Environment and Land Court. The purported transfer of the house does not include the furniture. The furniture and personal belongings should be returned to the petitioners. The objection is only based on the house.

Section 71 of the Law of Succession Act, Chapter 160 of the Laws of Kenya, allows the court to confirm a grant before the expiry of six (6) months. The contention that the objection does not comply with form 10 cannot stand. What is important is the substance of the objection. This petition was filed in July, 2015. There was no action until December, 2015 when a grant was issued. There is no evidence that the petition was served upon the objector before 3rd December, 2015 when the grant was issued. Further, the court can give directions and order that the objection be heard by way of oral evidence. Such an order can dispense with the need to file an affidavit. I do find that the objection has been properly raised. The court cannot confirm the grant and ignore the objector's claim to ownership of one of the properties included in the petition. Further, the contested property is part of litigation before another court. What would happen if the grant is confirmed and later the Environment and Land Court hold in favour of the objector. There is need to exercise restraint and not to rash for confirmation for the sake of it. The contention by the executor that they are one year late does not arise. There is no time limit for hearing and determination of objections set by the law. Such objections proceed like ordinary suits.

From the pleadings herein, the following timelines come out on actions taken by the deceased: -

- i. On 27th December, 2014 the deceased is supposed to have sold the house in dispute to the objector.
- ii. On 20th February, 2015 the deceased revoked her last Will and testament before an advocate in Malindi.
- iii. On the same date 20th February, 2015 the deceased revoked a power of Attorney granted in favour of the objector.
- iv. The Will annexed to the petition was done on 25th February, 2015. This is five days after revocation of her previous Will and power of Attorney.
- v. The deceased died on 20th March, 2015, less than one month after making her Will.

The Will includes the house in dispute. The house had been sold on 27th December, 2014. This was about two months to the time of making her Last Will. Several issues arise from the above chronology but those issues are not for determination now. Since the dispute on the ownership of the house is before the Environment and Land court, all those issues shall be determined by that court. Similarly, the issue of furniture and personal belongings in the contested house shall be determined by that court. The Environment and Land Court shall determine whether the House was sold to the objector, and if so, whether the sale included the furniture and personal belongings.

In the end, I do find that the objection is merited as it raises a serious issue on ownership of one of the properties. The court cannot ignore that objection. Although the petitioners seem not to be keen on having the grant confirmed without including the contested house, I do find that it is prudent to confirm the grant without including the house. This will enable the executors administer the other estate. I note that some of the properties and beneficiaries are located in France.

In the end, the objection to confirmation of the grant is upheld but only in respect of house Number Q7 located on Plot Number 587 A-G Complex Malindi. The grant is hereby confirmed excluding the above property. Each party shall meet their own costs.

Dated and delivered in Malindi this 10th day of March, 2016.

S. CHITEMBWE

JUDGE

