



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.185 OF 2015

In the Matter of the Estate of NaamanKaumeThiringi

ROSE MBAAH KAUME.....1ST PETITIONER
GEORGE KINOTI THIRINGI.....2ND PETITIONER
NAOMI KANANU KAUME.....3RD PETITIONER
EUNICE NKATHA.....4TH PETITIONER

Versus

ROSE MATARIA KIREMA.....APPLICANT

RULING

Enlarging time to file objection

[1] I have before me a Summons which is expressed to be brought under section 68 of the Law of Succession Act and rule 17(1) (2) and 73 of the Probate and Administration Rules. Therein the Applicant is requesting the court to enlarge time and permit her to file objection to grant of letter of administration. The application is supported by two affidavits sworn by the Applicant on 22nd July 2015 and 16th September 2015. It is also opposed by the Respondents through two affidavits sworn on 4th September 2015 and 14th October 2015. Parties also filed submissions in support of their respective stand points in the matter. I will consider all of these materials.

[2] This cause was filed as a result of consent orders issued on 17th September 2014 in a Citation filed through Meru Miscellaneous Succession Application No 579 of 2012. But bitter disagreements seem to have emerged among the parties after the recording of the said consent which occasioned delay in filing this cause. Nonetheless, the cause was eventually filed by the Petitioners without the Applicant who, according to the consent order was one of the persons to apply for grant of representation. The Petitioners have argued that the Applicant caused the delay herein and made compliance of the consent order to be extremely difficult when she refused to sign papers which had been prepared by their advocates and presented to her advocates for the Applicant’s signature. The Applicant has also given her account of things. The most important ones are two. The first explanation is that; whereas she was willing to have the petition filed, the Petitioners included strangers, i.e. the 4th Defendant who was divorced from the deceased at the time of his death. She provided court proceedings to support this claim but those proceedings are also under serious contestations by the Petitioners. The second is that the Petitioners included in

the petition properties which were not part of the estate. She says that after those facts were communicated to the Petitioners advocates, there has been no notification of the filing and gazetting of this cause to her, hence, failure to file objection on time. The Applicant summarized why she believes that she has shown a sufficient cause for the relief of extension of time as follows: She insisted that she has always been willing to be appointed one of the administrators of the estate of the deceased; she is the only lawful widow surviving the deceased; she has raised serious objections to inclusion of strangers in the cause; there is evidence of forgery especially by including the 3rd petitioner in the cause as a petitioner when she had died long before the filing of the cause; her house has been completely excluded from administration of the estate; and the delay in filing was for less than a month and was not therefore inordinate. On the basis of these facts she is convinced that she is entitled to relief and beseeched the court to allow her to file objection to the grant of letters despite the expiry of time prescribed in law. She says that the Petitioners will not suffer any prejudice if extension of time is allowed and appealed that the interest of justice to prevail.

[3] The Petitioners were clear that they are not denying that the Applicant is a beneficiary of the estate of the deceased, except that her conduct is tinged with malice and is self-serving. She had to be forced through a citation to accept or renounce letters of administration. And even after consent to apply for letters was recorded in court she continued to be an impediment to the filing of this cause. They accused the Applicant of wasting away the estate with a further dissipation of the estate unless this cause is finalized without delay. They are apprehensive that these objections will only serve to delay this cause further. According to her, all the issues she is raising will be addressed at confirmation stage. They asked the court to decline the relief.

DETERMINATION

[4] The question before me is whether I should extend time for the filing of objections to the grant. Let me make two observations. One; I note that this cause is characterized by deep seated disagreements among the parties. Two; parties have rendered themselves fully on matters that are quite substantial and are the core of the cause. However, I should think that, at this stage I must not express opinion which may prejudice the hearing of this trial. I will, therefore, say just enough for purposes of this decision. This court has wide power to give such orders as are necessary to meet the ends of justice in a succession cause. This it will do as a court of law. That is why the exercise of the general power of court to extend time under rule 67 of the Probate and Administration Rules could be on its own motion or upon application by a party in order to meet the ends of justice. With regard to extension of time to file objection to the grant under section 68(1) of the Law of Succession Act, the party making the request comes under rule 17(2) of the Probate and Administration Rules. This is one such application. I note that the Applicant is a beneficiary of the estate of the deceased. That fact has been admitted by all the parties. I note also that the Applicant has raised very substantial matters especially on the alleged divorce of the 4th Petitioner; inclusion of properties she thinks do not form part of the estate; and need for her house to be fully involved in these proceedings. Similarly, the Petitioners have taken up equally potent issues such as contestation of the divorce proceedings; issues of alleged wasting away of the estate by the Applicant; and the need for account by the Applicant. All these issues merit a day in court. I also note that the delay herein was not contumelious in any way, and therefore, is excusable and not inordinate. However, the court is alive of the overriding objective of the law as well as the obligations of parties towards assisting the court in attaining expeditious, inexpensive and affordable resolution of disputes. I now ask myself, what is the best way of resolving this cause without undue delay? In exercise of my powers, and in order to obviate any further delay herein, I order that the Applicant should be added as and is hereby appointed an administratrix of the estate of the deceased. She is now a joint administratrix of the estate of the deceased. In making this decision, I have carefully considered that one of the objections is that the 4th Petitioner was divorced from the deceased and was neither a spouse nor a dependant of the deceased. Towards that end I have said time and again and I will repeat it here that, parties should always understand that being an administrator does not place you in any vantage position over the other beneficiaries. In fact as an administrator you bear a legal load to administer the estate in accordance with the law

and failure to do so may attract sanctions or penalties. Again, an administrator need not necessarily be a beneficiary. Therefore, there is no cause of alarm because status as a spouse of the deceased or beneficiary and the entitlement of the 4th Petitioner in the estate will be one of the issues that I shall determine within confirmation proceedings. In making this decision I am aware that there were four petitioners who applied for letters of administration. But, since one of them is deceased, the power of administration shall vest to the surviving three petitioners plus now the Applicant to make it four as permitted by the law. The grant shall be accordingly issued. Having made the foregoing order, and in view of the time that has passed by, this confirmation should be applied for without delay. Accordingly, I direct the joint administrators to file a summons for confirmation of the grant within 14 days. Except if they can agree to file a single affidavit on distribution, each party, i.e. the Petitioners on one hand and the Applicant on the other shall file separate affidavits on their proposed distribution. The Applicant shall include the intended objections herein in her affidavit in the confirmation and it shall take the form of and be treated as protest within confirmation. I will thereafter give directions on how the objections or protests shall be canvassed. By this ruling, the application dated 23rd July 2015 is determined. I make no order as to costs. It is so ordered.

Dated, signed and delivered in court at Meru this 11th day of April 2016

F. GIKONYO

JUDGE

In the presence of:

Mr. Kaumbi advocate for Murango advocate for the applicant

M/s. Mbaikiata Advocate for petitioner

F. GIKONYO

JUDGE