

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 251 OF 2007

IN THE MATTER OF THE ESTATE OF F M N (DECEASED)

1. B M D

2. A N MPETITIONERS

VERSUS

R K.....RESPONDENT/OBJECTOR

RULING

Before court is the chamber summons dated 10th April, 2014. The applicants **B M D** and **A N M** have come to court seeking the following orders

- “1. THAT this Honourable Court be pleased to lift the objection lodged by the objector herein.**
- 2. THAT this Honourable Court do proceed to grant letters of administration to the applicants as prayed in the petition.**
- 3. THAT costs of this application be provided for.”**

The application was opposed. Both parties filed written submissions. The estate in issue is that of the late F M N (hereinafter referred to as ‘*the deceased*’) who passed away on 24th December, 2006 at Msambweni Hospital. She was survived by a daughter **A N** who was born on 3rd September, 1998. The husband of the deceased **T S** pre-deceased her in March, 2002. The 1st and 2nd applicants are the brother and sister respectively of the deceased who took up guardianship of her minor child upon her death. The applicants jointly petitioned the High Court for letter of administration intestate of the estate of the deceased in March, 2007. Their application was placed in the Kenya Gazette of 12th October, 2007. On 9th November, 2007 the objector **R K** filed a notice of objection on the basis that as the co-wife to the deceased she was also entitled to a share of the estate of the deceased. She further complained that her consent was neither sought nor obtained before the petition for letters of administration was made. After filing this objection no further action was taken either by the objector or the petitioners until April, 2014 when this chamber summons was filed.

The petitioners submit that the objection lodged ought to be lifted because it was lodged out of time and without any authority for enlargement of time being sought. Secondly, they submit that no answer or cross-petition has been filed as required by law. The petition for letters for administration was placed in the Kenya Gazette of 12th October, 2007. The law provides that any person wishing to do so may lodge an objection within thirty (30) days of the gazette notice. Although the petitioners claim that the objection was lodged on 30th November, 2007, I have perused the notice of objection Form 61 issued by the court registry and it indicates that the objection was actually lodged on 9th November, 2007. I have also looked at the Notice of Objection filed in this matter and I note that it was infact dated and filed on 9th November, 2007. I therefore find that the notice of objection was lodged in the court registry within the thirty (30) day required by law. Thus the objection was lodged within the time limit provided by law.

The issue as I see it is that both sides have sat back and done nothing to advance this matter. Neither party appears to have approached the court to take a hearing date. There is indeed a stalemate. The '*objector*' has approached the seat of justice and she deserves a chance to be heard. It would be unjust to lift her objection without allowing her the opportunity to ventilate the same. In order to move the matter forward I do direct that the objector file and serve their answer and cross-petition within fifteen (15) days of today's date. Thereafter the court will grant dates for the objection to be heard. If on the other hand no answer and cross-petition are filed within thirty (30) days then the Grant will be issued to the petitioners. It is so ordered. Mention on 20th June, 2014 to confirm compliance.

Dated and delivered in Mombasa this 9th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

No appearance by either party.

Mention notice to issue to both parties for 20th June, 2014.