

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO E033 OF 2024

IN THE MATTER OF THE ESTATE OF NAPENDRA CHANDULAL
NAGDA (DECEASED)

**MANSUKHLAL JAMNADAS MORJARIA- SUING THROUGH
HIS ATTORNEY- SHAYLESSKUMAR AKA SHAYLES MAGANLAL
PANCHMATIA.....OBJECTOR**

VERSUS

DEVYANI NARENDRA NAGDA.....PETITIONER

RULING

1. The succession proceedings herein were commenced by the Petition for Letter of Administration dated 2nd February, 2024 and filed on 23rd February, 2024 whereby the Petitioner stated that the deceased herein passed away on 4th January, 2024 and was survived by herself and her brother Akshay Narendra Nagda. The Petitioner listed Nakuru Municipality Block 4/31 as the only property for this Estate.
2. On 10th June, 2024, the Objector herein, filed an Objection to Making of a Grant dated 7th June, 2024 in form 76 and pursuant to Rule 17 of the Probate and Administration Rules arguing that the sole property listed in this Estate belongs to him and not the deceased.
3. He emphasised that the ownership question was subjection of Nakuru ELC Case No. 135 of 2019, where Mutungi J affirmed him as the owner of the said property. Further that upon Appeal vide Nakuru Court of Appeal Case No. E010 of 2022, the Court of Appeal dismissed the deceased's suit.
4. In the Affidavit sworn by Shaylesskumar Maganlala Panchmatia on 30th January, 2025, the Affiant stated that he is the legal registered attorney for Mansukhlal Jamnadas Morjaria (the Objector) and that Mr. Morjaria is the legal and rightful owner of the Suit Property. He stated that that ownership has been affirmed by judgments from the Environment & Land Court at Nakuru (ELC No. 135 of 2019) and upheld by the Court of Appeal at Nakuru (Civil

Application No. E010 of 2022). Specifically, that a decree dated 15th June 2021 declared Mansukhlal Jamnadas Morjaria as the lawful owner of Nakuru Municipality Block 4/31 and declared any claim by Narendra Chandulal Nagda to the property as null and void.

5. The Affiant asserted that the deceased and his children (Devyani Narendra Nagda and Akshay Narendra Nagda) are legally prohibited from interfering with the property based on the court judgments. Furthermore, that recent documents like a Certificate of Official Search dated 18th December 2024 and receipts for land rates and clearance certificates from January 2025 confirm Mansukhlal Jamnadas Morjaria as the proprietor and owner of the Suit Property.
6. The deponent termed the application by Devyani Narendra Nagda as fraudulent and an abuse of the justice system, and therefore urged its dismissal with costs.
7. This Application was canvassed by written submissions.

Objector's submissions

8. He maintained that the only asset listed in the application being Nakuru Municipality Block No. 4/31 (the Suit Property), never belonged to the deceased, rather that it was owned by the Objector.
9. He argued that though the application may be thought to be premature, having been filed before the gazettelement of the application notice inviting objections, there is no legal prohibition against filing an objection before gazettelement, especially in cases of suspected fraud. Furthermore, that despite the Deputy Registrar's directive on 23rd February, 2024, for gazettelement, the fees were paid on 15th April, 2024 and no notice appeared in the National Gazette until 6th June, 2024.
10. He submitted that the ownership of the Suit Property undisputedly vests with Mansukhlal Jamnadas Morjaria, a fact concluded by previous court judgments, specifically, in Environment & Lands High Court at Nakuru ELC No. 135 of

2019, where Hon. J.M. Mutungi J issued a decree dated 15th June, 2021 declaring Mansukhlal Jamnadas Morjaria as the lawful owner of Nakuru Municipality Block 4/31 and deemed any claim by Narendra Chandulal Nagda to the property null and void ab initio.

11. He submitted that the judgment was upheld by the Court of Appeal at Nakuru in Civil Application No. E010 of 2022, which dismissed the deceased's appeal with costs.
12. He added that the judgment from ELC No. 135 of 2019 also explicitly prohibited Narendra Chandulal Nagda, his servants, agents, and anyone acting under his authority from interfering with the property. Consequently, the deceased's children, Devyani Narendra Nagda and Akshay Narendra Nagda, are legally barred from interfering with the property and from making this application, as the Suit Property is not an asset of the deceased's estate.
13. He emphasised that the Petitioner's counsel appears to be abetting and aiding fraud by proceeding with a frivolous application without conducting mandatory searches to verify ownership. Further evidence of the Objector's ownership includes a Certificate of Official Search dated 18th December, 2024, confirming Mansukhlal Jamnadas Morjaria as the proprietor, as well as receipts for County Land Rates and a Clearance Certificate, both dated 14th January, 2025, issued in his name.
14. Additionally, that an Ardhisasa invoice from 1st January, 2025, for annual land rent for 2025 also reflects the Objector's ownership, with payment made on 31st January, 2025. He reiterated that these documents, along with extensive evidence from previous court proceedings, clearly demonstrate the Objector's undeniable ownership.
15. The Objector made reference to Section 67 of the Law of Succession Act regarding the notice period for grant applications and Section 68 concerning objections to applications, arguing that while notice is required, nothing

prohibits an objection being filed prior to gazettelement, particularly in cases of fraud.

16. On that basis, he argued that it's Affidavit was served via email to the Petitioner's advocates on 30th January, 2025, and physically on 31st January, 2025, as per Order 5 Rule 22B of the Civil Procedure (Amendment) Rules, 2020, and Section 1(B)(1)(e) of the Civil Procedure Rules, 2010.

17. In conclusion, he asserted that the application herein is sham, frivolous, made with devious and fraudulent intentions and constitutes an abuse of the justice system. He therefore urged this Court to dismiss the application with costs.

Petitioner/Respondent's Submissions

18. The Petitioner contended that the Objection is premature, arguing that the court is currently only at the stage of petitioning for a grant of letters of administration.

19. She emphasised that the standard procedure for publishing notice of an application is through the Kenya Gazette or by conspicuous exhibition in the court-house, along with any other court-directed methods. That an objection, therefore, can only be lodged within the notice period or an extended period allowed by the court. That once an objection is lodged, the objector is required to file an answer to the application and a cross-petition, and only after these steps are exhausted can the court determine the dispute.

20. She highlighted that the Notice of the Grant has not yet been published in accordance with Section 67 of the Law of Succession Act as read with Rule 17 of the Probate and Administration Rules at the time this Objection was filed. Furthermore, that the dispute could not be set down for hearing until the Objector had filed both an answer to the application and a cross-petition. In essence, the petitioner argued that the Objection fails due to its prematurity and should be struck out, allowing the proper legal process, beginning with the petitioner publishing the notice, to unfold. In support of this position, reliance was placed on the case of ***Re Estate of Robert Ngundo Nyiwa (Deceased)***

[2018] KEHC 8618 (KLR), citing paragraphs 51-62 of the ruling, where A. K. Ndung'u, J held:-

“A proper interpretation of Section 67 and Rule 7(4) would inevitably arrive at the conclusion that the purpose of gazettelement out of the Notice of the institution of the petition is to notify the public in order that anyone who would be interested in the estate either by way of being a beneficiary, creditor, debtor or however interested in the estate would come out and either object to the issuance of the grant or gain entry into the proceedings as may be provided in the Law relevant to the persons relationship to the deceased estate. The issue of this notice is a key component in the process of Succession and cannot be wished away. Indeed, within the wording of Section 67 of the Law of Succession Act No grant, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant inviting objections thereto to be made known to the Court within a specified period of not less than 30 days from date of publication and the period so specified has expired. In our instant suit, and as observed earlier, no grant has been issued yet. The fact of the matter is that even assuming that the Objector got no notice of this Petition and the Petitioner proceeded in the matter unhindered, this Court would not possibly issue a grant owing to the mandatory requirement of notice under Section 67 of the Law of Succession Act. This Succession is still in process. Indeed, the course of the process was diverted by the process of interlocutory applications by both sides before a full objection to issuance of grant and a cross petition was filed. The failure of Gazettelement cannot be fatal to this Petition at this point in time. The Succession Cause is work in progress. The fatality would only arise

when either a grant is issued without the requisite notice, in which case the grant would be revoked for the proceedings being defective in substance under Section 76(a) of the Law of Succession Act, or where on moving the Court to issue the grant, the Judge would decline for the obvious reason. This is not to say that the Court is satisfied with the state of affairs in this petition. Even at this point in time. There could be persons out there interested in the estate yet they have no notice. The matter is being litigated on and this may give rise to Court orders adverse to other interested parties without notice. As far as procedure is concerned when the Petition is lodged in court, among the mandatory payments is for the publication of the notice in the Kenya Gazette. How a Petition lodged in Court on 2nd April 2014 remains in our registry ungazetted is a serious indictment of our registrars and registry processes. No wonder, counsel for the Petitioner is throwing the buck at our door. In view of the foregoing, I am of the considered finding that the points of preliminary objections as raised fail the critical test. For reasons stated none succeeds and the preliminary objection is dismissed in its entirety. This petition needs to be moved forward. I have observed that the Gazettement of the notice of the institution of this cause has not been published. For the sake of the other parties who may be interested in the estate and the general public, the Deputy Registrar is to cause the Gazettement of this cause within the next 30 days hereof. The Preliminary Objection is dismissed. Costs awarded to the Petitioner.”

21. The Petitioner cited *Re Estate of Stephen Taraiya Kapande (Deceased) [2021] eKLR*, where while acknowledging that the objector had a case, S. N. Mutuku J held:- “ *...the Objector may have a case. I will allow her to argue her Protest at the time of hearing the Summons for Confirmation of Grant.*”

22. Further, the Petitioner referred to *In the matter of the Estate of Stephano M'Mugambi M'Ndiera (Deceased) [2008] KEHC KLR*, where W. Ouko, J (as he then was) held that:-

“An objection therefore can only be lodged within the period specified by the notice or such longer period as may be allowed by the court. Once a notice of objection has been lodged, the objector is required to file an answer to the application and a cross-petition. It is only after the above process is exhausted that the court shall proceed to determine the dispute. I have deliberately set out the procedure of lodging an objection and what follows to demonstrate that this application has been brought prematurely. A notice of the grant had not been published pursuant to the provisions of the Law of Succession Act or Rule 17 of the Probate and Administration Rules....”

23. In conclusion, the Petitioner urged this Court not to issue any orders as to costs.

Analysis and determination

24. The only issue for determination in this case is whether the Objection against making of a grant is merited.

25. In this case, the petitioner petitioned this Court for Letters of Administration intestate dated 2nd February, 2024 in respect of the deceased's estate. The Notice notifying the Principal Registrar of the application for letters of administration in the deceased's estate annexing all the relevant details of the deceased and/or Particulars of the application for grant are dated 23rd February, 2024. The Notice to the Government Printer for publication of the Cause herein in the Kenya gazette was of even date but the fees for the publishing in the Kenya Gazette was paid on 15th April, 2024.

26. The said Notices clearly indicated that the Objection to the Petition for the Grant of Letters of Administration Intestate in the prescribed form was to be made within thirty (30) days of the said publication in the Kenya Gazette.

27. The procedure for objection is addressed in Sections 67, 68 and 69 of the Law of Succession Act. Section 67 of the law of Section Act provides that;-

“(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.

(2) A notice under subsection (1) shall be exhibited conspicuously in the court-house, and also published in such other manner as the court directs.”

28. Section 68 of the Act provides for objection to application as follows; -

“(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.”

29. The procedure after Notice and Objections is provided for under Section 69 of the Act as follows; -

“(1) Where a notice of objection has been lodged under subsection (1) of section 68, but 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.”

30. Further, Rule 17 of the Probate and Administration Rules details the procedure of how the Objection to a grant of Letters of Administration is to be made. For emphasis, the Rule states that;-

“(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 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.(2)A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.(3)There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.(4)Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the

application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.(5)The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.(6)If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross- application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.(7)An objector may at any time prior to the filing of his answer and cross-application withdraw his objection by filing in the registry in Form 66 a notice of withdrawal of objection and serving upon the petitioner personally or by registered post a copy of such notice of withdrawal, in which event the objection shall cease to have effect and the objector shall not be liable for any costs or expenses which may have been occasioned to the applicant by reason for the objection: Provided that an objector who has withdrawn his objection shall not be entitled to file a further objection in respect of the same application for a grant.(8)An objector who wishes to amend his answer or his cross-application prior to the making of the grant may do so by filing in the registry in

which his objection was lodged an amended answer and cross-application, a copy of which, unless the registrar otherwise directs, he shall serve forthwith upon the applicant for the grant: Provided that where the proposed amendment is of a minor nature the registrar may permit the amendment to be made forthwith, notification whereof, unless the registrar otherwise directs, the objector shall thereupon give to the applicant in writing.(9)An objector who wishes to withdraw his answer and cross-application may do so by filing a notice in Form 64 in the same registry as that in which he filed his answer and cross- application and, unless the registrar otherwise directs, by serving a copy thereof upon each of the other parties; and he shall thereupon become liable to pay to the other parties to the proceedings such sum (if any) by way of costs and expenses as the court may direct.(10)When an answer and cross-application have been withdrawn pursuant to subrule (9), the objection pursuant to which such answer and cross-application were filed shall be deemed also to have been withdrawn and the registry at which the notice of withdrawal is filed shall forthwith notify the principal registry of that fact.(11)So long as an objection which has been lodged has not been withdrawn pursuant to subrule (10) no grant shall be made by any registry to the estate of the deceased prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act.(12)The principal registrar shall maintain a comprehensive index of objections entered in any registry (including the principal registry), and on being made aware of an application for a grant having been made in any such registry he shall cause the index to be searched and shall notify that registry in the event of an objection having been lodged in any registry

against the making of such grant.(13)Where two or more answers and cross-applications have been filed in response to the same petition then, unless the registrar otherwise directs, they shall all be heard together with the petition.(14)No registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased: Provided that an objection shall not operate to invalidate a grant made not less than twenty-one days after the period specified for inviting objections under section 67 of the Act but before knowledge or notification of the lodging of the objection is received by the registrar making the grant.(15)Where an objector in his objection, answer and cross-application expressly limits his objection to the making of the grant applied for to a challenge to the due execution of the alleged written or oral will and similarly restricts his right to call or cross-examine witnesses solely in regard to matters which might tend to disprove or prove such execution, he shall not be required to pay the costs or expenses of any other party to the proceedings unless the court before which the hearing takes place is of the opinion that there was no reasonable ground for challenging the execution.”

31. In this case, the material presented herein shows that a Notice to the Government printer was sent and the requisite fees paid. No Gazette Notice has been issued, a fact admitted by both parties. It is clear that the Petition for Grant of Letters of Administration Intestate has not been issued herein.

32. In the absence of proof that the Cause herein has been advertised in the Kenya Gazette, the filing of the Objection as contemplated in Section 68 of the Law of Succession Act is premature.

33. The effect of Sections 68(2) and 69(1) of the Law of Succession Act is that Objection proceedings in which no answer and cross-petition are filed are

incomplete and the court may proceed to make a grant to the petitioner. In addition, it is clear from Rule 17(6) of the Probate and Administration Rules that the intervention of the court will only come in after an objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application. There is no answer and cross-petition that would have warranted the Objection being placed before this court. The procedure of placing of the Objection herein before this court was therefore irregular.

34. Indeed, there is nothing on record to show compliance with the provisions of Rule 17 (4) and (5) of the Probate and Administration Rules before this Objection was placed before this court as envisaged in Rule 17(6) of the Probate and Administration Rules.

35. In those circumstances, the Objection to Making of a Grant dated 7th June, 2024 is premature and therefore struck out with no orders as to costs.

Dated, signed and delivered at Nakuru this 17th Day of November, 2025.

PATRICIA GICHOHI

JUDGE

Mr. Sarvia for Mr. Mongeri for Objector

Ms Anyera for Mr. Akach for Petitioner

Kamau, Court Assistant