

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE E3031 OF 2022

IN THE MATTER OF THE ESTATE OF PETER MIRINGU KIBUE (DECEASED)

STEPHEN MBAUNI KANGARI	.....	1ST OBJECTOR
SAMUEL WAWERU NJUGUNA	.....	2ND OBJECTOR
JANE WAIRIMU	.....	3RD OBJECTOR
DAVID KABUKI GITHINJI	.....	4TH OBJECTOR
STEPHEN MWANGI RUGUMI	.....	5TH OBJECTOR
SAMUEL WAINAINA KAMAU	.....	6TH OBJECTOR
FRANCIS NJERU MVUNGU	.....	7TH OBJECTOR
JANE WANJIRU GITHINJI	.....	8TH OBJECTOR
JOHN NGUNJIRI MAINA	.....	9TH OBJECTOR
CHRISTOPHER KAMAU KANGARI	.....	10TH OBJECTOR
WINFRED GITAHU GITHAIGA	.....	11TH OBJECTOR

VERSUS

ALICE WANJA MIRINGU	.....	1ST PETITIONER
JOSEPH KIBUE MIRINGU	.....	2ND PETITIONER

RULING

1. The Deceased herein died intestate on 9 June 2012 at the age of 74 years. He died at Gatundu Hospital. The Certificate of Death indicates his place of residence as Gatundu.
2. The Petitioners filed Petition for Grant of Letters of Administration Intestate in their capacity as daughter and son of the Deceased. In their Petition, they

indicated that the Deceased died intestate domiciled in Nairobi. They listed seven survivors, the Deceased's children. The Petitioners listed four assets of the estate, which are all situated in Ruiru, Kiambu County, with an approximate value of Kshs 4 million. Attached to their Application is a letter from the Chief, Theta Location, Juja Division, confirming the Deceased's residence and his dependents. Following the filing of the Petition, the application was duly published in the Kenya Gazette on 29 December 2023.

3. In response, the Objectors lodged their Objection dated 30 January 2024 on the following grounds:

- (i) That this Honourable Court lacks geographical jurisdiction in the matter since the assets listed in the Form P&A5 are geographically within the jurisdiction of either: Ruiru Senior Principal Magistrate Court, or Kiambu High Court or Thika High Court;
- (ii) That the Petitioners have misled the Honourable Court by excluding RUIRU/RUIRU EAST BLOCK 2/708 from the estate of the Deceased;
- (iii) That the Petitioners defaulted to disclose a liability in Form P&A5;
- (iv) That undisclosed liability is that the Objectors have beneficial interests in RUIRU/RUIRU EAST BLOCK 2/708 by virtue of being Purchaser's for value;
- (v) That the Petition clearly intends to prejudice the interests of the Objectors and mislead the Court.

4. In their Affidavit, the Objectors contend that this Court lacks geographical jurisdiction because the assets listed in the Petition are situated in Ruiru, Kiambu County. They also allege that the Petitioners deliberately and fraudulently concealed the existence of the disputed property, RUIRU/RUIRU BLOCK 2/708, in which they have acquired individual plots through a business entity known as Wakibui Help Group Investments. The Objectors

furnished the Court with copies of share certificates and receipts as proof of these transactions and that they are purchasers for value. They further depose that they have been in actual and continuous occupation of their respective plots for many years, with some having erected permanent residential structures thereon. To bolster their claim, they have provided a letter from the Senior Chief of Theta Location dated 11 September 2024, which appears to recognise their status as purchasers of plots within the disputed property.

5. The Petitioners opposed the Objections on several grounds. Their primary contention is that the Objection is procedurally incompetent and fatally defective. They argue that the Objectors have failed to comply with the mandatory requirements of section 68(2) and section 69 of the Law of Succession Act, which obligate an objector to file not only a Notice of Objection, but also an Answer to the Petition and Cross-Application for a Grant of Representation. The absence of these pleadings renders the Objection a nullity that ought to be disregarded by the Court.
6. The Petitioners also challenge the locus standi of the Objectors. They posit that under the hierarchy of administration established by Section 66, the children of the Deceased have a priority right to administer the estate over creditors or purchasers for value. As such, the Objectors lack the legal standing to object to the appointment of the Petitioners as administrator, and their proper recourse is to present their claims to the duly appointed administrators for verification at a later stage.
7. On the question of jurisdiction, the Petitioners maintain that the Deceased was domiciled in Nairobi and that the estate comprises of significant assets located within Nairobi, which are yet to be fully ascertained. They dismiss the initial valuation of Kshs 4 million as a clerical typographical error, asserting that the true value of the known assets is closed to Kshs 400 million.

8. The Petitioners raise grave allegations of intermeddling and potential forgery against some of the Objectors. They point out that several share certificates annexed to the Objection are dated years after the Deceased passed away, making it impossible for the Deceased to have executed the transactions.
9. In their Further Affidavit, the Objectors depose that the Deceased's land selling venture was a family business, and that even after his demise, his representatives continued to transact on behalf of the business by selling plots and issuing share certificates.

Analysis & Determination

10. I have carefully considered the pleadings, Affidavits and rival submissions.
11. The procedure for lodging an objection is prescribed at sections 68 and 69 of the Act as follows:

68. Objections to application

(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.

69. Procedure after notice and objections

(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.

12. The provision envisages a 3-step process for a complete objection: a Notice of Objection, an Answer to Petition and a Petition by way of Cross-Application. The Petitioners have submitted, and a perusal of the court record confirms, that the Objectors have only filed the first of these. They have not filed an Answer to Petition or a Cross-Application for a grant to be made to themselves. In **Jason Werimo Onyango vs Patrick Onyango Sakwa [2019] KEHC 5505 (KLR)**, when confronted with an identical set of circumstances, the Court held thus:

“The said provisions envisage the filing of a notice of objection, followed by an answer to the petition and a petition by way of cross-application. What constitutes the objection is the combination of the notice of objection, the answer to petition and the petition by way of cross-application. It would appear that where the objector files a notice of objection but does not file the answer and the cross-petition then the objection pleadings would be incomplete and the court ought to disregard the notice of objection and proceed to make a grant to the petitioner. According to section 69(2), the objection proceedings should only be heard after an answer and cross-application are filed under section 68 (2) of the Act. Under section 69(1) of the Act, where a notice of objection is filed but no answer or cross-

application has been filed as required by section 68(1) of the Act, the court ought to make the grant in accordance with the petition.”

13. An objection, if successful, halts the appointment of the proposed administrators. This creates a vacuum. The law, in its wisdom, requires the objector to propose an alternative by way of cross -Application to ensure that the estate is not left rudderless and susceptible to waste. The Objectors herein have not proposed any alternative administrators. Their prayers are for the Court to direct the Petitioners to amend their application to include the disputed parcel and disclose the Objectors' interests as creditors. These are not prayers that can be sustained through an objection proceeding; they are matters for a different stage and a different procedure.
14. On the question of locus standi, the Objectors define their interest as that of purchasers for value and creditors of the estate. The question is whether such an interest grants them the right to object to the making of a grant. The law distinguishes between the process of appointing an administrator and the process of distribution of the estate. Section 68 is concerned with the former.
15. The grounds for a valid objection typically relate to the petitioner's qualification, competence or suitability, for instance, by showing that another person has a prior right to administration under the law, or that the petitioner is unfit to administer the estate. The order of preference for appointment of an administrator in intestacy is set out at Section 66. It prioritizes the surviving spouse and children of the deceased. Creditors are ranked last. The Petitioners, as children of the Deceased, have a superior right to administration over the Objectors, who claim as creditors.
16. The Objectors do not challenge the Petitioners' relationship to the Deceased, nor do they allege that the Petitioners are incompetent or unsuitable to

administer the estate. Their entire case rests on a dispute over a specific asset. This is a claim against the estate, not a challenge to the administrators. These are matters that out to be properly raised at the point of confirmation of Grant by way of a Protest.

17. In *re Estate of Stephen Kimotho Karanja (Deceased) [2022] KEHC 26965 (KLR)*, the Court was emphatic that a person who is neither a beneficiary nor a dependent lacks the *locus standi* to object to the making of a Grant.
18. The third issue raised by the Objectors is material non-disclosure. First, the Court notes that the Petitioners included an omnibus clause for “any other property ...yet to be ascertained” in their P&A Form 5. While not a substitute for full disclosure, this clause does not militate against an inference of a deliberate and fraudulent intent to permanently conceal assets.
19. Furthermore, it is clear from the Objection filed that the status of the disputed property is far from straightforward. This asset cannot be considered to be a free asset, it is heavily contested. Its inclusion would require the resolution of a substantive and complex legal and factual dispute. Such a dispute cannot be resolved summarily in an objection hearing. It requires *viva voce* evidence and a full trial. It is also important to consider that this may not be the proper forum for ventilating the dispute.
20. In spite of the foregoing, the Objectors have raised one valid ground. The assets listed in the Petition are all situated within Kiambu County, although the estimated value is disputed. I also note that the Deceased died in Kiambu County and the Chief’s letter indicates that he was a resident of the Kiambu County. For that reason, this cause ought to have been filed at the High Court in Thika, which has the proper geographical jurisdiction.

21. In summary, I make the following orders:

- (i) The Objection dated 30 January 2024 is hereby dismissed;
- (ii) Grant of Letters of Administration Intestate to the estate of Peter Miringu Kibue (Deceased) shall issue to the Petitioners, Alice Wanja Miringu and Joseph Kibue Miringu;
- (iii) This matter is hereby transferred to the High Court at Thika for its expeditious determination.

DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOV 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Objectors: Mr. Muhita
Petitioners: Mr. Kingoina
Court Assistant: Lucy Mwangi