

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. E003 OF 2025

IN THE MATTER OF THE ESTATE OF THE LATE HENRY RUFUS OLE
KULET(DECEASED)

EVA MALESO KULET.....
PETITIONER

VERSUS

JANE NJERI KULET.....OBJECTOR

RULING

1. The Objector, Jane Njeri Kulet, filed an Objection to Making of a Grant dated 4th April, 2025, arguing that she was the first wife and widow of the Deceased. She contends that the Petition for Grant of Letters of Administration was fraudulently obtained through material non-disclosure and a lack of consultation. She adds that as the surviving spouse, she maintains a statutory priority in the administration of the Estate, which was disregarded by the Petitioner.
2. She states that the succession proceedings were instituted without seeking or obtaining the mandatory consent of all bona fide beneficiaries. Specifically, the Petitioner failed to obtain consent from the Objector, her children, and other primary beneficiaries whose interests are directly affected by these proceedings.
3. It is her contention that the Petition is fatally defective for failing to disclose all legal heirs and dependants. Notably, that the Petitioner omitted her daughter Margaret Seleina Kulet and the Estate of Edda Sein Kulet (Deceased daughter), the latter of whom is survived by a daughter, Ashley Naini Kulet aged 22 years.

4. The Objector challenges the Petitioner's valuation of the Deceased's Estate and stated that the stated sum of Kshs. 20,000,000 is an erroneous estimate and constitutes a concealment of material facts regarding the actual net worth and extent of the assets.
5. In light of the aforementioned wilful non-disclosures and procedural irregularities, the Objector holds a reasonable apprehension that the current administrator will not manage or distribute the Estate faithfully, honestly, or in the best interest of all beneficiaries.
6. The Application was canvassed via oral submissions by Mrs. Mukira, Advocate for the Objector, and Mr. Kinyanjui, Advocate for the Petitioner. Mr. Kinyanjui informed the Court that a Grant of Letters of Administration was issued for the Estate on 7th April 2025, following Orders dated 26th November, 2024 in Nyahururu Magistrates Court Misc. Succession Cause No. E012 of 2024 and which orders were issued in the presence of both parties.
7. In those proceedings, the Objector had cited the Petitioner for failing to take out Letters of Administration for the Deceased's estate. Consequently, the Petitioner maintained that the present Objection has been overtaken by events.
8. In response, Mrs. Mukira confirmed the existence of the citation proceedings in Nyahururu but stated that she was unaware that a Grant had already been issued by this Court on 7th April 2025. She argued that since the Objection was filed on the very same day the Grant was purportedly issued, the Application should be heard on its merits or, alternatively, stayed in accordance with Section 17 of the Law of Succession Act. She further urged the Court to exercise its discretionary oversight and recall the Grant under

Section 47 of the Law of Succession Act, contending that the Grant was issued irregularly due to a potential administrative error in the Registry.

9. By way of rejoinder, Mr. Kinyanjui submitted that the Objector's interests are sufficiently protected within the Petition and that they retain the right to object during the distribution stage of the Estate. He concluded by praying that the Application objecting to the making of the Grant be disallowed in its entirety.

Analysis and Determination

10. The only issue that call for determination is whether the Application for Objection for making of a grant should be allowed.

11. 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.”

12. Further, Section 68 of the Act provides that ; -

“(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.”

13. The procedure after notice and objections is provided for under section 69 of the Act, is 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.”

14. 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 avoidance of doubt, Rule 17 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 sub rule (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 sub rule (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 sub rule (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 sub rule (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.”

15. In this case, the Court record shows that the Objector’s assertions regarding her exclusion to be factually inaccurate. The Objector is explicitly listed as a widow under the ‘second house’. Furthermore, one of the children allegedly omitted, Margaret Seleina Kulet, is duly listed as a beneficiary in both the Chief’s Letter and the Affidavit in Support of the Petition (Form 5). The Court observes, however, that the estate of the deceased daughter, Edda Sein Kulet, was omitted, notwithstanding the survival of a dependent, Ashley Naini Kulet but that is an issue that can be dealt with at the of summons for confirmation of grant.
16. Regarding the Objector’s contention that her consent and that of her children, was not sought, the Court notes a significant history of procedural indolence on her part.
17. In Nyahururu CMC Succession Cause No. E012 of 2024, the Objector was cited for failing to petition for administration. Consequently, on 26th November 2024, the Honourable John Wang’ang’a (PM) issued an Order compelling the Citee (Objector) to take out Letters of Administration within sixty (60) days, failing which the Citor (Petitioner) was at liberty to proceed.

18. The record reflects that despite being aware of the said Orders, the Objector failed to comply within the stipulated sixty-day window. Consequently, the Petitioner moved the Court on 24th January 2025. The Petition was subsequently gazetted on 7th March 2025, providing the statutory thirty-day notice period for any party to lodge an objection.
19. As stated above, under the Law of Succession Act, the statutory period of 30 days for filing an objection following gazettelement expired on 6th April 2025. Mr. Kinyanjui confirmed receipt of the Objection dated 4th April 2025 and filed on 7th April 2025.
20. By the time of such filing, the Grant was already issued on 7th April 2025 as no objection was received within this timeframe. Accordingly, the Grant of Letters of Administration Intestate was properly issued on 7th April 2025.
21. Rule 17(11) of the Probate and Administration Rules provides that no grant shall be made where an effective objection has been lodged and remains pending.
22. However, it is a settled principle of law that an objection is only competent if it is filed prior to the issuance of a grant and within the timelines prescribed in the published Gazette Notice.
23. In the instant case, the thirty-day statutory window lapsed on 6th April 2025. By filing the Objection on 7th April 2025, the Objector acted outside the prescribed legal timeframe. There was no reason whatsoever as to why the Objector did not act within the timelines.
24. Furthermore, as the Grant was issued on the same day the Objection was filed, the objection has been overtaken by events. In the circumstances herein, this Court declines to exercise its discretion in favour of an indolent party.
25. Consequently, the Objection is hereby dismissed with no orders as costs.

Dated, signed and delivered at Nakuru this 13th day of April, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kinyanjui for Petitioner

Mrs. Mukira for the Objector

Erickson, Court Assistant

ORIGINAL