

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

SUCCESSION CAUSE NO E005 OF 2023

IN THE MATTER OF THE ESTATE OF JANE WAMBUI NDERITU

(DECEASED)

-AND-

NICHOLAS NGURE NDERITU.....1ST

RESPONDENT

CATHERINE WANGUI GICHUNGU.....2ND

RESPONDENT

EDITH NYOKABI KIGAMBA.....3RD

RESPONDENT

RULING

1. Jane Wambui Nderitu, deceased, died intestate on 26th May, 2019. Following her demise, Nicholas Ngure Nderitu, Catherine Wangui Gichungu and Edith Nyokabi Kigamba petitioned the court for grant of Letters of Administration Intestate of the Estate where they indicated that every person who had an equal or prior right to a grant of representation had consented, and they would render a just and true account of the estate as required by the law.

2. According to the affidavit deposed by the Petitioners, the deceased was survived by Nicholas Ngure Nderitu (son) and FNW a Grandson (minor), the son of James Waihenya Nderitu who died intestate in 2020.
3. An inventory of the deceased's assets and liabilities was given as;

ASSETS

- a. NYANDARUA/LESHAU KARAGOINI BLOCK 2/952
- b. NYANDARUA/LESHAU KARAGOINI BLOCK 2/953
- c. SIPILI/NDONYOLOIP BLOCK 1/6512 (1 SHARE = 5 ACRES)
- d. SIPILI/NDONYOLOIP BLOCK 1/5278 (1 SHARE = 5 ACRES)
- e. MANGUO TUMAINI - SERIAL NO. 078 REG. NO. 68497
- f. NDATHI MUGUNDA PLOT NO. 30 CERTIFICATE NO. 02450
- g. NYALA SACCO - MEMBER NO. 06951
- h. TOWER SACCO JOINT ACCOUNT 450200024115
- i. EQUITY BANK JOINT ACCOUNT

LIABILITIES

- SIPILI/NDONYOLOIP BLOCK 1/6512 (1 SHARE = 5 ACRES)
- 1. MR. & MRS. KIGAMBA - 1 SHARE
 - 2. MR. & MRS. KAROBIA (ALICE) - 1 SHARE
 - 3. MR. & MRS. RUIRU MACHARIA - 1 SHARE

4. MRS. RUTH NJAMBI MURIUKI – 2 SHARES

4. The petition for letters of administration intestate dated 30th January, 2023 was filed and received by the court on 1st March, 2023. And, it was gazetted through Gazette Notice No. 7904 of 16th June, 2023. Subsequently, on the 16th July, 2023 a grant of letters of Administration Intestate was issued and the three Petitioners representatives of the estate.
5. Through a Notice of Motion dated 18th April, 2024, Judith Itata, Applicant, seeks orders;

1) The honourable court be pleased to extend the time for filing of objection and answer to petition and cross petition.

2) That the objection and answer and cross petition be deemed as duly filed.

3) The costs be in the cause.

6. The application is premised on grounds that she is a beneficiary of the estate of the deceased and a pauper living from hand to mouth. That she is seeking to protect the interest of the minor who is a beneficiary to the estate.
7. That she was not able to instruct counsel in good time as she was depending on the deceased for her livelihood and sustenance hence she was not able to file the objection and cross petition from September 2023 as the file was transferred to Nyandarua Law Courts and parties in the Succession Cause were not able to file any documents; and

that it is in the interest of justice and best interest of the child that the court makes a determination on this issue.

- 8.** In an affidavit deposed in support of the application, the Applicant deposes that she is a representative of the estate of the late James Nderitu Waihenya who was her husband with whom they had one (1) issue. And, she was making the application as a dependent of the deceased.
- 9.** That the cause was gazetted on 16th June, 2023, but, she filed an answer to the petition and cross petition on 8th March, 2024 out of time because she was not able to instruct an advocate in good time following constraintment of financial resources.
- 10.** That the 1st Petitioner/1st Respondent who is harassing her and denying her the opportunity to farm so as to earn a living has rendered her destitute and her concern is to protect the interest of the minor who is also a beneficiary of the estate.
- 11.** Through a replying affidavit dated 8th May, 2024, deposed by Nicholas Ngure, the 1st Respondent, on behalf of the 2nd and 3rd Respondents, it is deposed that by filing several previous applications including Citation 22 of 2022 dated 17th October, 2022, and Miscellaneous Application E002 of 2023 on 7th March, 2023 the Applicant has demonstrated the financial ability to instruct counsel.
- 12.** The 1st Respondent disputes the allegations that the Applicant was married to the late brother James Waihenya

Nderitu. That the Chief Leshau has refused to grant the Applicant a letter of affinity or consanguinity to the deceased as her identity is undetermined. That the Applicant is an imposter involved in document fraud and forgery and has no affinity or consanguinity with James Waihenya Nderitu.

13. The 1st Respondent disputes the allegation that the Applicant was dependent on the deceased. And, for protection of the Minor, it is averred that he has been adequately provided for in the estate.

14. That the deadline for filing of an objection was 30 days after gazettelement which fell on 16th July, 2023 and the file was transferred to Nyandarua Law Courts in Olkalou on 18th September, 2023 long after the deadline had expired.

15. That granting the relief sought by the Applicant would be against the interest of justice as it would result into an unwarranted delay in the administration of the estate which will prejudice the beneficiaries who are reliant on a timely resolution.

16. The application was disposed through written submissions. It is urged by the Applicant that principles to guide the court's in considering applications of this nature were set out in the case of **Nicholas Salat v Independent Electoral and Boundaries Commission and 7 others [2014] eKLR** where the court stated as follows;

a) Extension of time was not a right of a party. It was an equitable remedy that was only

available to a deserving party at the discretion of the court;

b) A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;

c) Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;

d) Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;

e) Whether there would be any prejudice suffered by the respondents if the extension was granted;

f) Whether the application had been brought without undue delay; and;

g) Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.

17. That the delay in presenting the application is not inordinate and reasons given are plausible. That the intended objection raises serious issues that touch on the validity and credibility of the purported Will upon which the petition is premised.

18. That **Rule 17(2) of the Probate and Administration Rules** must be read together with the general rule on

enlargement of time contained in **Rule 67** which provides thus;

Where any period is fixed or granted by these Rules or by an order of the court for the doing of any act or thing, the court upon request or of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired.

19. Reliance was placed on **Re - Estate of Mary Karugi Mwangi [2018] KEHC3481(KLR)**. That **Rule 63 of the Probate and Administration Rules** allows the application of **Order 50 Civil Procedure Rules** that deal with enlargement of time.

20. In opposition of the application, it is submitted that the application is procedurally flawed and substantially unwarranted having been made long after the grant was issued on 16th July, 2023. Reliance is placed on **Section 68 of the Law of Succession Act** which provides for the time frame within which objections should be made.

21. Also relied on is case law, in **Re-Estate of Paul Mwangi Kimamo (Succession Cause No. 139 of 2017)** where it was held that an application for an extension of time filed after issuance of a grant of probate is generally considered overtaken by events unless exceptional circumstances justify extension. And, **Re-Estate of Paulo Kibet Cherono (P&A Cause No. 335/2013 and Estate of Agnes Ogola Akoth)**

where the principle that an extension of time to file an objection post grant is typically seen as incompetent unless it leads to the revocation of grant was re-enforced.

22. That the court has discretion to grant extension of time as an equitable remedy which should be exercised based on merits on each case as held in **Elizabeth Akinyi Ounda v Abubakar Wilberforce**; and the Applicant must demonstrate a compelling reason for the delay. That the reason should justify an extension of time.

23. I have considered the application, supporting and opposing affidavits and annexures thereto together with the rival submissions.

24. Section 67 of the Law of Succession Act provides;

(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.

25. The petition was filed on 1st March, 2023. The Applicant appointed an advocate pursuant to the Notice of Appointment dated 14th April, 2023. On 16th June, 2023, the cause was gazetted. Following the publication, objections, if any, were to be made within thirty days of 16th June, 2023. It is acknowledged that an objection was purported to be made without leave of court.

26. Section 68 of the Act provides;

(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.

27. The grant of letters of Administration Intestate was issued on 16th July, 2023. This was pursuant to the original application. The court is seized of jurisdiction to unsettle the grant issued if reasons given are exceptional. The Applicant is duty bound to render an explanation of the delay and the reasons must be valid.

28. The argument put forth by the Applicant is that the delay is not inordinate. The publication having been made on 16th

July, 2023, the Applicant was expected to file the objection within 30 days. It is not explained why the advocate who was appointed on 14th April, 2023, did not act as required. On her part the Applicant alleges that she was constrained due to lack of resources. By attempting to file the objection on 8th March, 2024, nine months later the delay cannot be dismissed as not having been inordinate.

29. There is also the contribution of the delay by the question of transfer of matters administratively from Nyahururu to Olkaou when the High Court relocated to Nyandarua. Thereafter the matter was mentioned but later transferred back to Nyahururu. This actually contributed to the delay.

30. However, looking at the prejudice that maybe suffered, this is a case where a letter was obtained from the office of the Chief, Leshau. The letter from the Administrator obtained by the Petitioners states thus;

“The eldest son James Waihenya Nderitu (deceased) was survived by his son NFW (minor) who was born in Kamolo Village Mella Parish, Tororo District in Republic of Uganda per birth notification Ref. No. 190000BbN 3037 to James Waihenya Nderitu and one Itata Judith Emuria of Ugandan Nationality.”

31. None of the Petitioners have custody of the minor who resides with her biological mother, the Applicant herein. The prejudice alleged of not ensuring the case is expedited cannot

outweigh the question of the court determining the matter between the parties. It would be in the interest of justice to have the objection heard for purposes of protection of the interest of the minor.

32. For that reason, I allow the application by extending time within which the Objection is to be filed. Further, the Notice of Objection on record be and is hereby deemed to have been filed pursuant to **Section 68(1) of the Act**. Secondly, the Answer to the Petition and Cross Petition shall also be deemed to have been duly filed.

33. Costs of the application shall be in the Cause.

34. It is so ordered.

Dated, signed and delivered virtually this 14th day of April, 2026.

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L.N. MUTENDE

JUDGE