



**In re Estate of Ngure Kairu (Deceased) (Succession Cause E2190 of 2021)
[2024] KEHC 7736 (KLR) (Family) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E2190 OF 2021
MA ODERO, J
JUNE 28, 2024**

IN THE MATTER OF THE ESTATE OF NGURE KAIRU (DECEASED)

RULING

1. Before this court are two applications for determination as follows:-
 - i. Summons dated 18th February, 2022.
 - ii. Summons dated 11th May, 2022.
2. Although the record indicated that there was a third application dated 30th May, 2022 pending determination, the same was not in the court file nor was I able to trace that application in the CTS. Accordingly I will only deal with the applications which I have had sight of.

Background

3. This succession cause relates to the estate of the late Ngure Kairu (hereinafter ‘the Deceased) who died intestate on 9th December, 2020. A copy of the Death certificate Serial Number 1066972 is annexed to the Petition for Grant of letters of Administration Intestate dated 28th October, 2021.
4. Following the demise of the Deceased his children Kairu Ngure, Anne Messi Kairu, Maguku Ngure Kairu and Njambi Ngure Kairi jointly applied to be issued with Grant of Representation to the estate. In their supporting Affidavit the Petitioners claimed that the Deceased was survived by the four (4) petitioners and another daughter Wangui Wambui Ngure.
5. The Objector Eliza Ngure Kairu, then filed an objection to making of a Grant dated 17th February, 2022. The Objector claimed that she was a wife/widow of the Deceased and complained that she and her two (2) sons had been excluded by her step-children in the Petition filed in court.
6. The Matter was referred to Court Annexed Mediation but the Mediator vide her report dated 29th March, 2022 indicated that no agreement was reached.



7. To date no Grant has been issued to any party and the Objection is yet to be heard.

i. Summons dated 18th February, 2022

8. In this Summons the Objector/Applicant Eliza Muringo Ngure sought the following orders:-

- “1. Spent
- 2 Spent
- 3 That this court be pleased to grant to the Applicant an extension of the thirty (30) days period for filing of an objection to the issuance of a grant as stipulated under Section 67 of the *Law of Succession Act*.
- 4 That upon extension of time under Prayer 3 above the Applicant be directed to file the Objection within such period as the court shall direct.
- 5 That alternatively the objection already filed herein by the Applicant be deemed as properly filed.
6. That costs of this application be in the cause”

(ii) Summons dated 11th May, 2022

9. This Summons was filed by Kelvin Gatimu Muhinyia Ngure (the 2nd Objector) and Kennedy Kihuha Muhinyia Ngure (the 3rd Objector) seeking the following orders:-

- “1 Spent
- 2 Spent
- 3 That this court be pleased to grant to the Applicants an extension of thirty (30) days period for filing of an objection to the issuance of a grant as stipulated under Section 67 of the *Law of Succession Act*.
4. That upon extension of time under prayer 3 above the Applicants be directed to file the objection within such period as the court shall direct.
5. That alternatively the objection already filed herein by the Applicants be deemed as properly filed.
6. That the costs of this application be in the cause.

10. The two applications dated 18th February, 2022 and 11th May, 2022 are basically identical. They have been filed by the Objector Eliza Ngure Kairu and her two sons. The application seek for extension of time within which to file the objection to the making of a Grant.

11. Following the demise of the Deceased the Petitioners herein filed a Petition dated 28th October, 2021 seeking Grant of letters of Administration Intestate. The Objectors who claim to be the widow and children of the Deceased and therefore beneficiaries to the estate filed Objections opposing the issuance of Grant to the Petitioners. The 1st Objection was dated 17th February, 2022.

12. Section 67 of the *Law of Succession Act* Cap 160, Laws of Kenya provides that any Petition for Grant of Representation must be published (In the Kenya Gazette). The purpose of such publication is in



order to inform the public of the petition and to invite objections. Any such objections should be filed within thirty (30) days of the publication of the notice.

13. The Objector avers that the delay in her filing the Objection occurred because she was not informed of the filing of this succession cause. That the Petitioners Advocate only forwarded the Gazette Notice inviting objections on 14th February, 2022 which was several months after the thirty (30) day period provided in law for filing of objections had elapsed.

14. The question of whether or not to grant an extension of time is a matter of the discretion of the court. In *Nicholas Kiptoo Arap Kori Salat -vs- IEBC & 7 Others* [2014] eKLR, the Supreme Court of Kenya set out the principles to be considered by a court in the exercise of this discretion to extend time as follows:-

- “ 1 Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- 2 A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- 3 Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis.
- 4 Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
- 5 Whether there will be any prejudice suffered by the respondents if the extension is granted.
- 6 Whether the application has been brought without undue delay; and
- 7 Whether in certain cases like election petitions, public interest should be a consideration for extending time”

15. I have considered the two applications seeking extension of time in light of the above principles. I note that the applications were filed several months after the petition for Grant had been filed.

16. However the Objectors have explained that they were not aware that any other party had filed a petition. The 1st Objector states that she was unwell having developed hypertension and depression as a result of being kicked out of her matrimonial home by the Petitioners. The 2nd and 3rd Applicants claim to have been dependant on the Deceased immediately prior to her demise. They too state that they were unaware that a petition had been filed.

17. The objectors state that since the matter was referred for Court Annexed Mediation they did pause in order to allow a chance for mediation.

However no settlement was reached. I am satisfied by the explanations given for the delay.

18. It is my view that the objectors have shown interest in pursuing their rights to the estate. They ought to be allowed an opportunity to ventilate their respective positions.

19. I find that no great prejudice will be suffered by the Petitioners if this application is allowed as they will be granted an opportunity to respond and to oppose the objections.

20. Finally I do allow the two applications dated 18th February, 2022 and 11th May, 2022. The three objectors are granted an extension of time within which to object to the Petition for Grant of letters of



Administration Intestate. The objections dated 18th February, 2022 and the Objection dated 11th May, 2022 are both deemed to be properly filed. The same to be served upon the petitioners within seven (7) days. The Petitioners are at liberty to file and serve their responses within fourteen (14) days. Thereafter the matter will be mentioned before the Presiding Judge Family Division Nairobi for directions on hearing of the two objections. Each party will bear their own costs.

DATED IN NYERI THIS 28TH DAY OF JUNE, 2024

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MAUREEN A. ODERO

JUDGE

