



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.E011 OF 2020**

**IN THE MATTER OF THE ESTATE OF DR. QUINTUS EKESSA – DECEASED**

**ANNETRIZA EKESSA**

**JULIE WENDY EKESSA.....PETITIONERS**

**RONALD IKAMAR EKESSA**

**DIANA AKISA EKESSA**

**AND**

**MONICA WAMBUI NJUNG'E.....OBJECTOR**

**R U L I N G**

[1] The petition for letters of administration intestate respecting the estate of the late Dr. Quintus Ekessa (**deceased**) dated 23<sup>rd</sup> November 2020, was filed herein on 24<sup>th</sup> November 2020 by four of his children including Annetriza Ekessa, Julie Wendy Ekessa, Ronald Ikamar Ekessa and Diana Akisa Ekessa (**petitioners**), acting on behalf of all the other beneficiaries who included two surviving widows of the deceased i.e. Joan Khainja Mola Ekesa and Francisca Ongaji and several children i.e. three (3) sons and six (6) daughters. A third widow of the deceased, Everlyne Mandela Angogo Ekessa is since deceased.

[2] The necessary notices were issued on 15<sup>th</sup> January 2021 and on 11<sup>th</sup> February 2021, the present objection to making of grant dated 5<sup>th</sup> February 2021 was filed together with a cross-petition also dated 5<sup>th</sup> February 2021.

The objector, **Monicah Wambui Njung'e** lays a claim to the estate of the deceased on the basis that she was the fourth wife of the deceased with whom they were blessed with a son, Collins Nduati Ekessa and a daughter, Valencia Amoit Ekessa.

As per the directions given by the court, the objection was canvassed by way of affidavit evidence and written submissions. In that regard, necessary affidavits were filed by both sides.

The objector's submissions dated 26<sup>th</sup> July 2021 and supplementary submissions dated 21<sup>st</sup> October 2021 were filed on her behalf by **Roseline Odede & Co. Advocates**, while the petitioners submissions dated 5<sup>th</sup> July 2021, were filed on their behalf by **Odumbe & Ayieta Advocates**.

[3] The basic issue arising for determination is whether the objection is competent and proper before the occur and if so, whether the objector has established satisfactory grounds for dismissal of the main petition and upholding of the cross-petition.

On competence of the application or objection, the record indicates that after the filing of the petition on the 24<sup>th</sup> November 2020, the notice to the principal registrar of probate and administration was issued or made on the 15<sup>th</sup> January 2021. Similarly, the notice for publication in the Kenya gazette was made on the same date.

[4] S.67 (1) of the Law of Succession Act provides that:-

**“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 the 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.”**

Under S.68 (1), notice of any objection to an application for a grant of representation shall be lodged with the court within the period specified by the notice or such longer period as the court may allow. And, where notice of objection has been lodged, the court shall give notice to the objector to file an answer to the application and a cross application within a specified period.

Under S.69 (1), if no answer or cross application has been filed, a grant may be made in accordance with the original petition/application. But if an answer and cross application have been filed, the court shall proceed to determine the dispute after giving necessary directions.

[5] Basically, the objection proceedings are meant to deal with preliminary issues such as whether the applicant is the correct person to apply for the grant and after the court makes a finding on the preliminary issue, the administration of the estate proceeds in the normal manner.

Clearly, the record shows that the procedure prescribed in Ss 67, 68 and 69 of the Law of Succession Act was not followed by the objector unless the record is incomplete or inaccurate.

The pre-requisite gazette notice was not issued by necessary publication. Therefore, the objector had no basis for filing this objection and by doing so, the objection was premature, incompetent and improper before this court.

[6] In the circumstances, it would not be prudent to dwell on the merits or demerits of the objection as this could as well lead to the determination of the dispute between the parties pre-maturely. The objector may hold her veins for now and await the publication or issuance of the necessary gazette notice before taking another bite at the cherry. However, the intended objection should serve as a warning light for a very protracted and emotional dispute in court unless the parties see the wisdom of engaging to come up with a resolution which will be beneficial to all the rightful beneficiaries of the estate of the deceased.

Otherwise, the present objection is premature, incompetent and improper before the court. It is accordingly dismissed with parties bearing their own costs.

**J.R. KARANJAH**

**J U D G E**

**[DATED AND DELIVERED THIS 1<sup>ST</sup> DAY OF DECEMBER, 2021]**



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