



REPUBLIC OF KENYA



In re Estate of Robert Kinyanjui Kimani (Deceased) (Succession Cause E046 of 2023) [2024] KEHC 12539 (KLR) (17 October 2024) (Directions)

Neutral citation: [2024] KEHC 12539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E046 OF 2023
DO CHEPKWONY, J
OCTOBER 17, 2024**

IN THE MATER OF ESTATE OF ROBERT KINYANJUI KIMANI- (DECEASED)

DIRECTIONS

1. In this matter, a Petition for Grant of Letters of Administration Intestate in respect of the Estate of Robert Kinyanjui Kimani was filed in 25th May, 2022. The same was supported by an affidavit of his wife and son Jane Nyanjugu Kinyanjui and James Kimani Kinyanjui respectively.
2. The Objector, Zipporah Nyakio Karigo filed an Objection to the making of the Grant dated 2nd June, 2023 on the basis that she is the second wife of the deceased and has been left out of his Estate. In opposition, the Petitioner filed a Replying Affidavit on 3rd July, 2023.
3. From the court records, a Notice known as Form 60 was issued by the Deputy Registrar dated 22nd September, 2023 and the publication of the Notice was gazetted on 15th December, 2023. This court then issued Grant of Letters of Administration Intestate on 16th January, 2024.
4. Consequently, from the record there is an unfiled Summons for Confirmation of Grant dated 12th July, 2024. The Court also notes that there is Summons for Revocation of Grant dated 12th March, 2024 and Replying Affidavit sworn on 11th June, 2024. This matter was then slated for Ruling on 28th August, 2024, on which date the court referred the matter to this court for revision of the orders on the basis that this court issued the said Grant of Letters of Administration Intestate when there was an Objection on record.
5. On 15th October, 2024 when the parties appeared before this Court, Ms. Kihika counsel for the Objector indicated to court that there was an oversight at the registry and the Grant was subsequently issued by the court when there was a pending Objection. On his part, Mr. Ngugi Kamau, counsel for the Administrators stated that there is an Objection in the matter but there is no record that the Objection was held in abeyance. He stated that the Objection ought to have been filed after the Grant was gazetted pursuant to Rule 17 of the Probate and Administration Rules. He then contends that since no Objection was filed, the court proceeded and issued the Grant.



6. Counsel confirmed that there are Summons for Revocation of the Grant which is yet to be heard and holds that they are not amenable to Revocation of Grant by consent since the Objector is a stranger to the Estate as she is claiming to be a wife of the deceased.
7. He has urged that the Summons for Revocation be heard by way of viva-voce evidence and not by written submission and seeks that the court allows parties to file witness statements and documents in preparation for hearing.
8. According to the counsel for the objector, there is an order for the Objection to be held in abeyance and seeks that the court issues a date for ruling and not hearing of the matter. She urges that the Grant was issued out of an oversight by the staff at the registry. And on the issue of the Objector being a stranger of the Estate, counsel is of the view that the same can be dealt with later. She reiterates that the court should proceed and deliver a ruling on the matter.
9. In rejoinder, the counsel for the Petitioners goes on to indicate that the Objection has already been overtaken by events and that this being a family matter, there has never been a hearing on the question of whether the Objector is a wife of the deceased and whether her children are children of the deceased. He therefore has urged that there is need for such issues to be determined by way of affidavit since it is an issue of fact and now law.
10. Having read through the record and the documents as filed by the parties, the court notes that indeed there was an Objection dated 2nd June, 2023 that had been filed after the filing of the Petition. It is this Petition which ought to have been first determined before granting on Grant of Letters of Administration. This is clearly a glaring inadvertence and therefore the court hereby proceeds to revise its order and revoke the Grant of Letters of Administration dated 16th January, 2024.
11. Further, given that there is a pending Summons for Revocation of Grant dated 12th March, 2024 and since the court has already revoked the said Grant, the said Summons for Revocation of Grant are hereby found to have been overtaken by events.
12. In any case, a reading of the said Summons for Revocation of Grant reveals that the issues raised therein are similar to those raised in the Objection on whether the Objector is a wife to the deceased, hence one of the beneficiaries of the Estate of the deceased. As such, it will be prudent that the court makes a determination on the Objection proceedings before re-issuing a Grant of Letters of Administration Intestate.
13. The upshot of this is that the court hereby issues the following Directions:-
 - a. The Grant of Letters of Administration issued to Jane Nyanjugu Kinyanjui and James Kimani Kinyanjui dated 16th January, 2024, be and are hereby revoked.
 - b. That the Summons for Revocation of Grant dated 12th March, 2024, having been overtaken by events, is hereby marked as abandoned.
 - c. The matter to be mentioned by before Court 1 for Directions on the disposal of the Objection dated 2nd June, 2023.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 17TH DAY OF OCTOBER, 2024.
(UPLOADED VIA ELECTRONIC MAIL)**

D. O. CHEPKWONY



JUDGE

