



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.266 OF 2012**

**IN THE MATTER OF REUBEN OMADEDE (DECEASED)**

**BETWEEN**

**JONATHAN OMADEDE.....PETITIONER**

**AND**

**LAWI OMADEDE.....OBJECTOR (DECEASED)**

**AND**

**ZAKAYO ACHILU EKIRAPA.....PROTESTOR**

**AND**

**GAD ORONO OMADEDE & OBWANA ETYANG.....APPLICANTS/INTERESTED PARTY**

**R U L I N G**

[1] This succession cause pertains to the grant of letters of administration intestate initially issued on 18<sup>th</sup> September 2012, to **Jonathan Omuse Omadede**, respecting the estate of the late Reuben Qureten Omadede (**deceased**) which comprised of land parcel No.North Teso/Angurai/292. However, an objection was raised on the 25<sup>th</sup> February 2014 by **Lawi Omadede**. A second objection vide an affidavit of protest dated 15<sup>th</sup> May 2014, was purportedly made by **Zakayo Achilu Ekirapa**.

Whereas Jonathan is herein described as the **petitioner**, Lawi is described as the **objector** and Zakayo is described as the **protestor**.

[2] After the hearing of the main objection, the court in its ruling dated **8<sup>th</sup> April 2020**, revoked the grant said to have been issued to the petitioner on 13<sup>th</sup> February 2014, instead of the 18<sup>th</sup> September 2012. Most probably, the 13<sup>th</sup> February 2014, or thereabout was the date that the grant was confirmed in favour of the petitioner.

Upon revocation of the grant, the court ordered that the objector be appointed the new administrator of the estate of the deceased. However, the objector sadly passed on allegedly on 9<sup>th</sup> July 2017, and his sons, **Gad Orono Omadede** and **Obwana Etiang**, applied to be substituted in his place as administrators of the estate vide the notice of motion dated 16<sup>th</sup> April 2020, which remains pending to date.

[3] In the meantime on the 2<sup>nd</sup> July 2020, the so-called protestor, Zakayo Achilu Ekirapa, applied for revocation of the grant made on 8<sup>th</sup> April 2020 in favour of the late objector on grounds that the grant has since become useless and inoperative on account of the demise of the objector. The protestor, also seeks an order appointing him as the administrator of the deceased. His supporting affidavit indicates that he is claiming a beneficial interest in part or the whole of the estate property as a purchaser. The application is however, opposed by the petitioner.

[4] Both the applicant/protestor and the petitioner filed their written submissions in support of and in opposition to the application through **J.V. Juma & Co. Advocates** and **Ouma Okutta & Associates**, respectively. This court having given due consideration to the application and the rival submissions is of the opinion that what comes up as issues for determination are **firstly**, whether the application is proper and competent before court and **secondly**, if so, whether the applicant does have the necessary "*locus standi*" to make the application. With regard the first issue, the application presupposes the existence of a grant. However, the record shows that there is no grant to be revoked as the order of the court made on 8<sup>th</sup> April 2020, was never effected and/or implemented by the issuance of a fresh grant of letters of

administration in favour of the object. In the premises, this application is incompetent, improper and misconceived before court.

[5] With regard to the second issue, the applicant is clearly not connected to the deceased and indeed, the deceased objector by family lineage. He was not a beneficiary of the estate of the deceased in any manner and his alleged claim of a beneficial interest in the estate property would best be addressed in a civil action by himself against the estate of the deceased. If the claim was however, acknowledged by the family of the deceased, then it ought to have appeared as a liability in the petition for the grant of letters of administration. The fact that it did not appear as such meant that the claim was not acknowledged and/or recognized by the family of the deceased. It would therefore follow that the applicant did not have the necessary "*locus standi*" in applying for revocation of a grant to which he would be a stranger. His prayer that he be appointed as the new administrator of the estate of the deceased was far-fetched. It demonstrated an intention to further abuse the court process.

[6] In sum, the material summons for revocation of grant is hereby disallowed with no orders to cost. It would be appropriate for the family of the deceased objector to pursue their application for substitution dated 16<sup>th</sup> April 2020, after which they can obtain a fresh grant respecting the estate of the deceased whose widow is also deceased. In order to fast track the application a hearing date shall be fixed today, the 25<sup>th</sup> of November 2021.

**J.R. KARANJAH**

**J U D G E**

[Read & signed this 25<sup>TH</sup> day of **NOVEMBER 2021**]