

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1874 OF 2011

IN THE MATTER OF THE ESTATE OF ERIC WILLIAM MBELA (DECEASED)

ELIZABETH WANJIKU MUCHIRA.....OBJECTOR/RESPONDENT

VERSUS

JOSEPHINE EGWA MBELA.....RESPONDENT/APPLICANT

RULING

1) This cause commenced on 1st September 2011, when the Respondent Josephine Egwa Mbela petitioned the court for letters of Administration Ad Litem, to the intestate Estate of the deceased Erick William Mbela. She presented the petition in her capacity as the widow of the deceased. On 20th September 2012 the Objector, Elizabeth Wanjiku Muchira who is the mother of the deceased, filed a summons seeking the revocation of the said grant. The application for revocation was grounded on allegations that the grant was obtained fraudulently by making of a false statement and by concealment of material facts from the court. It was also alleged that the Applicant had failed to produce to the court a full and accurate inventory and account of assets and liabilities of the deceased.

2) There seems to be no response to the summons and neither was the application prosecuted. Instead the Respondent/Applicant filed a Notice of Motion dated 19th February 2014 seeking that the said application be struck out with costs. The Notice of Motion was premised on grounds that the Summons for Revocation is scandalous, frivolous and vexatious and stands the risk of prejudicing, embarrassing and/or delaying the fair trial of the action and is an abuse of the court process.

3) The Summons for Revocation is supported by the affidavit sworn on 19th September 2012 by the Objector/Respondent in which she depones that the grant of Letters of Administration ought to have been made to more than one person since there is a continuing trust. Further that the relationship between the deceased and the Respondent was strained before his death.

4) The Notice of Motion on the other hand was supported by the affidavit of the Respondent/Applicant sworn on 19th February 2014, in which she deponed that the Grant of Letters of Administration Ad Litem issued to her by the court, was limited only to filing of suit. That she did use the grant to file High Court Civil Suit No. 459 of 2012 at Nairobi.

5) There is also no response to this Notice of Motion, but it is the application for consideration before me.

6) Upon assessment of the grounds in both the Summons for Revocation and the Notice of Motion, and upon consideration of the averments in the supporting affidavits, I find that the Notice of Motion dated 19th February 2014 filed by the Respondent/Applicant on 19th February 2013 has merit, for the reason that the Summons for Revocation is premature. The Objector/Respondent should await the filing of the full grant to raise her objection, since the Grant Ad Litem issued to the Respondent/Applicant was limited only to the filing of suit, and did not extend to the distribution of the Estate or any part thereof.

For the foregoing reasons the Summons for revocation filed on 20th September 2012 is hereby struck out with costs to the Applicant in the Notice of Motion dated 19th February 2014.

SIGNED DATED and DELIVERED in open court this **24th** day of **February 2015**.

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L. A. ACHODE

JUDGE