



REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA
AT KITALE
SUCCESSION CAUSE NO. 174 OF 2012
IN THE MATTER OF ESTATE OF LATE SAMWEL MULIKA TONJO....DECEASED.
AND
MARGARET JONJATHAN MULIKA.....PETITIONER.

R U L I N G

This is a ruling respecting the preliminary objection taken out by the petitioner vide the notice of preliminary objection dated 3rd December, 2013.

the objection is premised on three grounds viz:-

- I. That, the application by the objector in the suit dated 18th January, 2012 is incurably defective and an abuse of the court process and ought therefore be dismissed.***
- ii. That, the firm of M/s. Nandwa & co. Advocates had no instructions prior to the filing of the said application.***
- iii. That, the grant herein was issued in accordance with the last will of the deceased.***

In his submissions, Learned Counsel, **Mr. Kaosa** argued on behalf of the petitioner that the application dated 18th January, 2013, was not signed by the firm of Nandwa & Co. Advocates thereby making it unknown on how they came into the record in this matter and as to whom they are acting. Consequently, the application should be struck out.

Learned counsel, **Mr. Nandwa**, appearing for the objector in the main suit contended that the material application was signed and that a notice of appointment of advocate dated 18th January, 2013 was filed in court on the 25th January, 2013 and served on the same date thereby rendering the firm proper on record.

From the foregoing submissions, it is apparent to this court that the main issue precipitating this objection is the legal representation of the objector in this matter and not whether or not the subject grant was issued in accordance with the will of the deceased as indicated in ground three of the notice of preliminary objection. In any event, such ground would arise at the hearing of the substantive application dated 18th January, 2013.

Be that as it may, the application dated 18th January, 2013, is for revocation or annulment of grant and for cross-application for grant. It is made by Judith Nasimiyu Mandila in her capacity as a daughter in law of the deceased Samwel Mulika Tonje and is against Margaret Jonathan Mulika, the administrator of

the estate of the deceased by dint of grant of letters of administration with written will annexed dated 1st November, 2012.

the grant is yet to be confirmed.

The application was presented by the firm of Nandwa & Co. Advocates on behalf of the applicant and is duly signed and dated.

A notice of appointment of Advocates was duly filed on 25th November, 2013 respecting a different application dated 25th November, 2013.

The Notice of Appointment of Advocates respecting the material application dated 18th January, 2013, was filed on 25th January, 2013 but was dated 18th January, 2013.

It would therefore follow that the firm of Nandwa & co. Advocates is proper on record in this matter and that the preliminary objection by the petitioner is lacking in merit. It is therefore dismissed with costs.

[Read and signed this 12th day of March, 2014.]

J.R. KARANJA.

JUDGE.