



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**SUCCESSION CAUSE 80 OF 2006**

**IN THE MATTER OF THE ESTATE OF THE LATE: JAFRED BWISA SITATI  
..... DECEASED**

**AND**

**IN THE MATTER OF SELINA NABUBWAYA ..... PETITIONER**

**AND**

**IN THE MATTER OF EDWARD NAMASAKA BWISA ..... APPLICANT**

**RULING**

**This is a ruling on Preliminary objection raised by Mr. Kiarie for the Petitioner dated 24/9/2007 on the following grounds:**

- a. *That the applicant has no locus standi to make the application.***
- b. *That the filing of the application amounts to a fragrant abuse of the due process.***

**Mr. Kiarie submitted that, the Petitioner has a grant that was issued to her on 24/1/2007. The Applicant/Objector has filed an application for revocation of grant dated 22/4/2008. It is the contention of the Petitioner's counsel that the Applicant has not complied with the procedure provided for under Rule 60 of Probate and Administration Rules (P&A) which makes it mandatory that an appearance must be entered by any person requiring to be heard through an advocate or by counsel and thereafter file the necessary papers. The Applicant's counsel has filed a notice of appointment of advocates under rule 9 of P&A Rules. Which rule is not available for use by him. The rule applies in a case where parties are in person and later appoints an advocate. Mr. Kiarie relied on Nakuru High Court Succession Cause No.81 of 2002 where Justice Musinga struck out an application for failure to comply with Rule 60. According to the Petitioner's counsel, the Applicant's application dated 22/4/2008 is incompetent and should be struck out.**

**The preliminary objection was opposed by Mr. Makokha for the Applicant on grounds that it is misplaced and intended to delay the expeditious disposal of this cause. The Applicant has filed summons for revocation under Rule 9 which allows a party or his advocate to file such an application. The requirements for address and particulars of service have been complied with and the notice of appointment duly signed by the advocate. Rule 70 provides for re-adoption of the**

forms in any way with additions, valuations or amendments. Rule 60 is therefore not mandatory. The counsel distinguished the Nakuru High Court Succession Cause with the present case in that, the summons for revocation were filed by an advocate and the notice of appointment of advocates filed seven (7) months later. In the present case, the summons for revocation and notice of appointment were filed the same day. He urged the court to invoke Rule 73 which gives the court inherent powers to make any necessary orders to meet the ends of justice.

The preliminary objection is based on Rule 60 of the P&A Rules which provides as follows:

*“Every interested person (whether or not he had been served with notice hereof) who wishes to be heard upon or to oppose any application, and has not already appeared in the proceedings, shall enter appearance in form 26 in the registry in which the application is made giving his address for service, and may file such affidavits as he considers proper, to each of which the applicant may with leave of the court file an affidavit in reply.”*

The provisions of Rule 60 are very clear that the Objector must have entered an appearance in the format of form 26 before taking any other step in the proceedings. The provisions can not be substituted with any other rule including the ones cited by the Applicants. It is entering of an appearance by a party that gives him the *locus standi* to be heard in the case. Once appearance has been entered, the Applicant may file any other papers to which the other party may file a response with the leave of the court.

The Applicant cited rule 8, 9, 70 and 73. Rule 8 talks about application for a grant by a party in person or through an advocate which is not relevant in the case before me. Rule 9 provides for application by the Applicant in person at any registry and does not apply to filing of summons for revocation. This is a case where a grant has already been issued and the objector is coming in to protect his interest and as such Rule 9 does not apply. Rule 70 provides for use of the forms provided for in the First Schedule with such adoptions, additions and amendments. This rule does not provide for the procedure to be followed in filing summons for revocation. Rule 73 is a general provision giving the court inherent powers to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the court. I find that this rule can not be invoked herein for the reason that the applicant has not properly joined the proceedings.

It is my finding that the provisions of Rule 60 are mandatory proceedings which provide to be followed by any party wanting to be heard by the court in any succession cause. Failure to comply with the same provisions denies a party any *locus standi* in the matter. I concur with the ruling of Justice Musinga in the Nakuru Succession Cause where he held that an objector lacks *locus standi* for failure to comply with Rule 60 and directed that the documents which were improperly filed were premature and ought to be withdrawn. I therefore uphold the preliminary objection by striking out the summons for revocation filed on 25/6/2007 by Wetangula, Adan and Makokha Advocates for the Applicant with costs to the Petitioner.

F. N. MUCHEMI

JUDGE

*Dated, Delivered and Signed at Bungoma*

*This 9th day of July 2009 in the presence of Mr Ingosi for petitioner and Wattanga for the objector.*