



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA.**

**SUCCESSION CAUSE NO. 483 OF 2010.**

**IN THE MATTER OF THE ESTATE OF ZEDEKIAH AMUHANDA ABWOVA ::::::::::::::**  
**DECEASED.**

**BETWEEN**

**PETER MAREMA :::::::::::::::::::: APPLICANT.**

**AND**

**MOSES ABWOBA )**

**SABET MUTEKU ) :::::::::::::::::::: RESPONDENTS.**

**RULING**

**INTRODUCTION.**

1. The deceased herein ZEDEKIAH AMUHANDA ABWOVA alias ZEDEKIAH AMUHANDA S/O ABWOBA died on the 30<sup>th</sup> June, 1987. Grant of letters of Administration were issued to MOSES ABWOBA and SABETI MUTEKU and confirmed on 28<sup>th</sup> November, 2013 and the deceased's estate distributed accordingly.
2. By the summons for revocation of grant dated 25<sup>th</sup> February, 2014, the applicant/objector PETER MAREMA sought for orders for the revocation of the grant above mentioned and that a fresh grant be issued to him and that costs of the application be borne by the respondent.
3. The application is premised on the grounds thereof specifically that the respondent left out VIKUTSA SCHOOL which is a beneficiary of the deceased's estate and the widow of the deceased. Further the objector/applicant claims that all beneficiaries did not consent to the filing of the petition for grant and that the summons for revocation was fatally defective. They add that the administrators are urging the school and the widow of the deceased to purchase the land which they are occupying which act is fraudulent.
4. The application is opposed. SABETI MUTEKU one of the administrators and the 2<sup>nd</sup> respondent filed a replying affidavit with the authority of the 1<sup>st</sup> respondent. She claims to be the only surviving widow of AMOS MUDEGU who was the son of the deceased herein. She maintains that all the procedures for the petition of grant were duly followed and that the applicant has no locus standi to bring the application for revocation as he is not a beneficiary of the deceased's estate or sponsor of Vikutsa School as he claims.
5. She adds that the matters pertaining to Vikutsa School were amicably solved by the area A.E.O. as

shown in the reports “S.M.-1 and 2”. She has denied having threatened to evict the school and Jackline Musee. She maintains that VIKUTSA SCHOOL is supposed to buy the portion its claiming and they have failed to do so. Parties adopted their statement which are on record. The application was canvassed orally.

### **Objector’s case.**

6. The objectors called three witnesses. From their evidence the objectors claim that the deceased herein donated 11 acres of his land for purposes of building a school. This was sometime in 1973. PW1 testified that he brought the objection on behalf of the school. He adds that they were not informed about the succession but they only learnt of the same after the grant had been confirmed. They want the school to be allocated its share.

7. This was done at a meeting which was attended by their area chief. They have not produced the minutes of the said meeting. They claim that because of this the school is a beneficiary to the deceased’s estate.

### **Petitioner’s case.**

8. Moses Abwova, the son to the deceased herein testified that he was the only son surviving the deceased. His brother died in 2007 and left behind Sabeti who is her sister in law and the 2<sup>nd</sup> petitioner in this case. He told the court that his father gave 1 acre of his land to the nursery school and another 3 acres to the church.

9. The title deed was issued i.e. KAKAMEGA/ILLEKO/726 and KAKAMEGA/ILLEKO/727 respectively. He added that after it was donated the school agreed to buy the said land from them. They had a meeting as shown in the minutes DEXH. 5 but since then they have not agreed.

10. On cross-examination by Mr. Mukabwa, he explained that when the petition was filed the school was on the said land. He maintains that the school is not a party to the succession as can be shown in the chief’s letter and that the school was aware that they had filed the succession.

11. He further explained on re-examination by Mr. Musiega that the succession was meant to benefit the family of the deceased and that the school is not a beneficiary to the deceased’s estate.

### **Submissions.**

Parties agreed to exchange written submissions.

12. The applicant in their submissions have defined the term beneficiary as captured from MOZLEY AND WHITELEY’S LAW DICTIONERY. They claim that the deceased herein held the legal right to the school land on trust for the school and the school was the beneficiary and it was wrong for the school to be ignored in the succession.

13. It is further submitted by the applicant that it is fraudulent for the applicant to now seek to see the land to the school which also amounts to intermeddling an offence under section 45 of the Law of Succession Act Cap 160 Laws of Kenya. It is also claimed that the grant was obtained and confirmed on a defective affidavit in support of the confirmation as it was not signed by the 2<sup>nd</sup> administrator SABETI MUTEKA.

14. On their part the respondents through A.B.L MUSIEGA & CO. ADVOCATES submitted that Jackline who was introduced as a beneficiary never presented any claim to court. Further that no document was produced on the part of the applicant to prove the claim that the deceased gave land to the school. They submit also that the grounds for revocation of grant have not been proved by the applicants as required by law. The applicant has also failed to name those beneficiaries whose consent was lacking.

15. On the import of the signature of Sabeti, the respondent submit that the applicant is not a representative of the 2<sup>nd</sup> administrator and that it was not demonstrated to the court how failure to sign summons by one administrator would be a ground for the revocation of a grant.

16. On the issue of fraud, the respondent submitted that the applicant never explained how the demand for payment by the administrators to someone in occupation of a deceased's estate is fraudulent and can be a ground for revocation of the grant.

17. The respondents have in their submission relied on section 46 of the Law of Succession Act and explain that the courts will ordinarily rely on the local administrators especially the area chief to find the particulars of a deceased estate. The letter from the chief which is on record has not shown that the applicant's school was part of the beneficiaries to the deceased's estate.

**Determination.**

18. In determining the issue before this court which is whether this court should revoke or annul the grant issued to the respondents herein, it should be clear as provided by section 66 of Cap 160 that the court has the discretion to prefer certain persons to administer the estate as a deceased person who died interstate.

19. It is incumbent upon the applicant to demonstrate that any of the provisions in section 76 of Cap 160 were not followed. In this particular case it is clear that the deceased, before he died gave a portion of his land to the school. From the evidence this is not in dispute. The applicants though have not shown any documents to prove their claim nor have the respondents shown anything to rebut the claim by the applicants.

20. The said land was given in trust for the benefit of the school. It was not absolute, thus the school cannot now claim that they are beneficiaries to the deceased's estate. They ought to have at least followed up the matter with the deceased to have the land transferred to them. With documentation then this court would count the school as a beneficiary to the deceased estate and it would have the *locus standi* to bring this case and seek for revocation of the grant.

21. I find therefore that the applicants have failed to demonstrate the provisions of section 76 of the Law of Succession Act Cap 160 laws of Kenya nor have they shown that they had *locus standi* to bring this case before this court.

22. The application is without merit and is therefore dismissed with costs to the petitioner.

**SIGNED, DATED and DELIVERED at KAKAMEGA this 7<sup>TH</sup> day of DECEMBER, 2016.**

**C. KARIUKI.**

**JUDGE.**

**In the presence of:-**

**Objector/Applicant ..... for the Applicant.**

**Musiega ..... for the Respondent.**

**Anunda ..... Court Assistant.**