



REPUBLIC OF KENYA



**In re Estate of Kimeli Rono (Deceased) (Citation Cause 14 of 2024)
[2024] KEHC 14779 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CITATION CAUSE 14 OF 2024**

E OMINDE, J

NOVEMBER 27, 2024

IN THE MATTER OF THE ESTATE OF KIMELI RONO (DECEASED)

BETWEEN

ERIC KIBET RONO CITOR

AND

EUNICE KIPYEGO CITEE

RULING

1. What is before this court is a citation to accept or refuse letters of administration intestate dated 23/01/2024? The Citation is premised on the grounds on the face of it and the contents of the affidavit in verification of proposed citation. The citor claims to be a grandson and a beneficiary of the estate of the deceased.
2. Further, that the citee, the daughter in law of the deceased, has unlawfully and without just cause withheld the death certificate of the deceased thereby preventing the commencement of the succession proceedings which in turn denies the beneficiaries their due inheritance. The citor further stated that the citee has commenced the illegal distribution of the estate of the deceased without a grant or court order necessitating the issuance of preservation orders by the court.
3. The citee stated that due to the actions of the citor, the estate of the deceased comprising of the parcel of land known as Kaptagat/Lotonyok Block 2 (Koilel) 34 remains yet to be distributed to the beneficiaries thus subjecting them to hardship. The citor deponed that the deceased died intestate in 1996 leaving behind the following beneficiaries;
 1. Salome Maiyo - Daughter
 - a. Daniel Chumo - Grandson David Maiyo - Grandson
 - b. Eunice Maiyo - Granddaughter



- c. Grace Maiyo – Granddaughter
 - d. Joel Maiyo – Grandson
 - e. Rael Maiyo – Granddaughter
 - f. Margaret Maiyo- Granddaughter
 - g. Benjamin Maiyo – Grandson
 - h. Christine Maiyo – Granddaughter
 - i. Philemon Maiyo- Grandson
2. Eunice Kibet - Daughter
- a. Dorcas Jerotich Lagat – Granddaughter
 - b. Eric Kibet Rono- Grandson
 - c. Caroline I. Kibet- Granddaughter
3. Samson Kitur- Son
- a. Edwin Kitur – Grandson
 - b. Daniel Kitur- Grandson
 - c. Joyce Kitur- Granddaughter
 - d. Hillary Kitur- Grandson
 - e. Lilian Kitur- Granddaughter
 - f. Raymond Kitur - Grandson
 - g. Josphat Kitur- Grandson
 - h. Grace Kitur- Granddaughter
 - i. Wilson Kitur- Grandson
 - j. Edna Kitur- Granddaughter
 - k. Prisca Kitur- Granddaughter
 - l. Emily Kitur- Granddaughter
 - m. Irene Kitur- Granddaughter
 - n. Teresa Kitur- Granddaughter
 - o. Jesang Kitur- Granddaughter
3. Joseph Kimeli - Son
- a. Judith Kipyego - Granddaughter
 - b. Jacob Kipyego- Grandson
 - c. Enock Kipyego- Grandson



- d. Thabita Kipyego- Granddaughter
 - e. Susan Kipyego- Granddaughter
 - f. Joachim Kipyego- Grandson
4. John Kemei-Son
- a. Jackson Kemei - Grandson
 - b. Sarah Kemei- Granddaughter
 - c. Teda Kemei- Granddaughter
 - d. Purity Kemei- Granddaughter
5. Mary Matonvei- Daughter
- a. Maureen J. Matonyei - Granddaughter
 - b. Alex Matonyei- Grandson
 - c. Everlyne Matonyei- Granddaughter
 - d. Ben K. Kiptum Matonyei- Grandson
 - e. Josphat Matonyei- Grandson
 - f. Mercy J. Matonyei- Granddaughter
 - g. Naomi J. Matonyei- Granddaughter
4. He deposed, that none of the beneficiaries have taken out letters of administration and reiterated that the citee has withheld the death certificate of the deceased. He concluded that he had opted to cite the citee in order for the estate to be distributed.

Eunice Kipyego's Replying Affidavit

5. The citee responded to the citation vide a replying affidavit dated 18/09/2024. She denied the contents of the citation and the affidavit. She stated that Citation proceedings are mainly filed to trigger filing of a Petition for grant rather than preservation of the estate. Further, that the citor has never filed any application to preserve the estate if at all the same was being intermeddled with as he alleges in his affidavit.
6. The deponent averred that the citor lacks the capacity to institute citation proceedings on behalf of the estate because he is a grandson and therefore he does not fall within the required consanguine levels. He cannot qualify to petition or directly inherit from the deceased's estate hence he cannot administer the deceased's estate. Additionally, she stated that the citor has never attempted to convene a family meeting to discuss the issue of filing succession proceedings which is an issue affecting the entire larger family and therefore requires an amicable engagement with all the beneficiaries.
7. The deponent stated that being one of the administrators in the estate of the deceased, together with her brother in law John Kimeli Kipkemei, son of the Kimeli Rono (Deceased) they are willing to take out the grant of letters of administration with regard to the estate.



8. She denied the allegations of intermeddling and urged that she the allegations are false, stating that she has not acquired the deceased's death certificate as claimed. She urged the court to dismiss the citation with costs and issue an order to the amicable settlement of the controversies herein.

John Kimeli Kipkemei's Replying Affidavit

9. John Kimeli Kipkemei filed a replying affidavit dated 18/09/2024. He deponed that he was a son to the deceased. He stated that his sister Selly Chelagat Kimaiyo and himself are the only surviving children of the deceased. He urged that citation proceedings are mainly filed to trigger the filing of a petition for grant and not the preservation of the estate. He stated that the citor has never filed any application to preserve the estate and further, that he lacks the capacity to institute citation proceedings as he is a grandson to the deceased.
10. He urged that the citor has never convened a family meeting to discuss the filing of succession proceedings. Further, that he and the citee are willing to take out a grant of letters of administration for the estate. He stated that the citation is a waste of the court's time, urging the court to dismiss the same and allow him and the citee to Petition for a grant of Letters of Administration.
11. In concluding his affidavit, the deponent stated that the claims of intermeddling are untrue and that the citor had not tabled any evidence o substantiate the claims of intermeddling.

Hearing of the citation

12. The parties were directed to file written submissions on the citation. The citor filed submissions dated 01/10/2024 through the firm of Messrs Emmanuel Kipkurui & Company Advocates whereas the citee filed submissions dated 25/10/2024 through the firm of Messrs. Chepseba & Company Advocates.

Citor's submissions

13. Learned counsel for the citor reiterated the contents of the citation, urging that none of the beneficiaries had instituted succession proceedings and further, that the citee had unlawfully obtained and withheld the death certificate of the deceased. He stated that the citee has been numerously reminded to commence succession proceedings but has deliberately refused to do so. Since the deceased died in 1996, an inordinate amount of time has lapsed without the citee having commenced succession proceedings which stands to prejudice the estate of the deceased. He emphasised that the law requires that a legal representative be appointed so as to enhance the distribution of the estate.
14. It is the Citor's case that in support of the application, he adduced documentary evidence to wit; A copy of a letter from the office of the chief, Kaptagat location, identifying the deceased's children. A copy of the certificate of official search for the parcel of land known as Kapragat/Lotonyok Block 2 (Koilel) / 34. Letter from the Citor's advocate to the citee. The Citee's and the said John Kimeli Kipkemei's replying affidavit dated 18th September 2024.
15. Counsel submitted that the procedure for commencing citations is provided under Rule 22(1) of the Probate and Administration Rules. He also cited Rule 22(5) of the Probate and Administration Rules and Section 47 of the Law of Succession Act which grants this court jurisdiction to grant the orders sought. In addition, he cited Rule 73 of the Probate and Administration Rules.
16. Counsel urged that upon citation, if any person cited does not file any appearance or response within the period stated in the citation, the citor may petition the court for a grant himself or apply for noting by the court that the power of an executor who has been cited has cease; or apply to the court that



the person specified be given specified time within which to take out a grant. Failure to respond to the citation after service is deemed to be a renunciation of the right to apply.

17. It is the Citor's case that a person served cannot claim that he or she was not informed of the proceedings or that the cause was filed secretly without his or her knowledge. These provisions guarantee that no estate of a deceased person should remain without administration. He urged that once the cause is filed, notice of proceedings and hearing of confirmation of grant must be given to the beneficiaries. Further, that for purposes of citation, it is necessary that the applicant show that he or she has a bona fide interest in the estate of the deceased to prompt the respondent to action. Hence, rather than seek to challenge the citation, the respondent ought to have filed a substantive petition for grant for it is in such petition that all the issues raised herein can be canvassed.
18. Counsel submitted that the scope of a citation is limited, citing the cases of *John Osichi v Hana Omolo Osewe & Another* (2013) eKLR, *Josiah Muli Wambua* (2014) eKLR and *In re Estate of Ndole Mwakidudu* (2022) eKLR in support of these submissions. Counsel urged that the citor has proved his case on a balance of probabilities, and urged that it is in the interest of justice that the prayers sought be allowed.

Citees' submissions

19. Learned counsel for the citee urged that the citation lacks merit as it raises issues that cannot be addressed in citation proceedings. He cited rule 22(1) of the Probate and Administration Rules, urging that the essence of filing citation proceedings is to trigger the filing of succession proceedings. He cited the case of *Josiah Muli Wambua* (2024) eKLR and stated that a citation cause is issued to a person, who having authority to petition for grant of letters of administration, has not done so or is taking unreasonable time to do so.
20. He stated that it is worth noting that the citor is not only seeking to trigger filing of succession proceedings but maliciously accusing the citee of distributing the estate without authority. He urged that such allegations are unfounded and aimed towards misleading the court. Further, that such issues cannot be handled in a citation cause and should be raised in an application to protect the estate of the deceased under Section 45 of the *Law of Succession Act*.
21. The citee urged that the citor is not concerned about the conduct of the succession proceedings but is raising unwarranted claims against the citee and therefore, it follows that the citation lacks merit hence ought to be dismissed.
22. Counsel submitted that the pertinent question that arises is who is entitled to petition for the grant of letters of administration intestate. He stated that the priority considered by the court in determining the same is captured under Section 66 of the *Law of Succession Act*. Further, that the citor does not fall within the priorities described under section 66 of the Act and as such he cannot petition for a grant of letters of administration when the son of the deceased is alive. Additionally, the citee is the deceased's daughter in law and therefore well suited to administer the estate in priority to the citor.
23. Counsel urged that the citee acknowledged that she is willing to petition for a grant of letters of administration intestate and prayed that the court allows her prayer to do so in conjunction with John Kimeli Kipkemei who is the son to the deceased. Counsel urged the court to dismiss the citation dated 23rd January 2024



Analysis and Determination

Priority to Petition for Grant of Letters of Administration

24. Having considered the depositions made by the parties in their respective Affidavits including that of John Kimeli Kipkemei who described himself as the son of the deceased, a fact which was not disputed, as well as the submissions made on behalf of both parties, in my considered opinion, the only issue for determination is

Whether the citor has the legal capacity to make the citation.

25. The relevant provision of the law that on citations is Rule 22(1) of the Probate and Administration Rules and it states as follows;

“A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.”

26. From this provision, it should be noted that the emphasis is that is that a person making a citation would himself be entitled to a grant in the event the person cited renounces his right thereto. The question the Court needs to answer in determining the issue drawn as being for determination is whether the citor is one such person.

27. Under Part V, of the *Law of Succession Act*, Section 39 makes the following provision on the priority of beneficiaries of a deceased estate under the circumstances listed;

Where intestate has left no surviving spouse or children

- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

25. Further Section 66 of the *Law of Succession Act* provides as follows on When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference -

- a. surviving spouse or spouses, with or without association of other beneficiaries;



- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

28. In this case, there is a surviving son, one John Kimeli Kipkemei who under the provisions of Section 39(1) (c) above cited ranks equally with the citor who it is common ground is a grandchild of the deceased. It is also not denied that the mother of the citor was a daughter of the deceased and that she too is deceased. It is also common ground that the estate of the citor's grandfather has never been distributed to cater for the interest of all the children of the deceased whether living or dead and that subsequently, no property comprising the estate has so far devolved to the citor's mother.
29. Under Section 41 of the [Law of Succession Act](#), if the estate had already been distributed and the daughters of the deceased catered for, then the citor would have inherited the portion allocated to his deceased mother. The said section also provides that every residue of the estate of a deceased devolving upon a child, the property comprised therein shall be held in trust for any and all the children of the estate as well as the issues of such children. The said provision provides as hereunder;

Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

29. On the issue of where an in law to the deceased is placed as a beneficiary vis-à-vis the children and the grandchildren of a deceased, the decision in Kakamega Succession Cause NO. 661 OF 2015 In The Matter Of the Estate of Imoli Luhatsé Paul (Deceased) by the Hon Mr. Justice Musyoka is relevant. The Hon Judge held as follows;

Section 39 of the [Law of Succession Act](#) makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the [Law of Succession Act](#) is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

29. The Hon Judge continued thus;

Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the [Law of Succession Act](#), there is not a single provision in



the *Law of Succession Act*, or any other statute for that matter, which makes provision for any in-law. Consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. Their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. They can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the estate of their parents. I must emphasize that grandchildren are not in that boat with such in-laws, and they claim from their grandparent's estate, not on behalf of their dead parents, but directly as grandchildren, children of such dead children, the share that ought to have gone to their parents.

29. The Hon Judge cited with approval similar findings in his own decision *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and the decision of Justice T. Matheka *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR.
29. Section 47 of the *Law of Succession Act* gives the Court the power to pronounce itself on any Application before it in a manner that it considers just and expedient. It provides that:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”
29. Further, Rule 73 of the Probate and Administration Rules provides as follows;

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
29. In light of my findings as above, I am well satisfied that the citor has the requisite legal standing to bring this citation against the citee who the citor alleges has the title deed to the land comprising the deceased estate which she has refused to release to enable the succession proceedings to commence.
29. From the decision in the Kakamega case that I have cited above, it is clear that the citee has absolutely no locus to inherit any part of the deceased estate in her singular capacity as the daughter in law of the deceased except through that which devolves to her deceased husband.
29. Given that a son of the deceased is still alive, the Court under the provisions of Section 47 and Rule 73 herein above cited directs that the said son one John Kimeli Kipkemei initiates the process of obtaining the requisite Letters of Grant to administer the Estate of the deceased within the next 90 days failure to which the citor is at liberty to apply. In the event that the citee as alleged is in possession of the deceased death Certificate, she is now hereby directed to surrender the same to John Kimeli Kipkemei to enable the process commence.
29. Each Party shall bear their own costs.

READ DATED AND SIGNED AT ELDORET ON 27TH NOVEMBER 2024

E. OMINDE

JUDGE

