



**Singoei & 2 others v Some & 3 others (Citation Cause  
E058 of 2021) [2022] KEHC 12243 (KLR) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 12243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CITATION CAUSE E058 OF 2021**

**EKO OGOLA, J  
JUNE 27, 2022**

**BETWEEN**

**REUBEN SINGOEI ..... 1<sup>ST</sup> CITOR  
ROSE SOME ..... 2<sup>ND</sup> CITOR  
JAMES KIPKEMBOI KEMEI ..... 3<sup>RD</sup> CITOR**

**AND**

**DAVID SOME ..... 1<sup>ST</sup> CITEE  
ENOCK YEGO ..... 2<sup>ND</sup> CITEE  
JONATHAN YEGO ..... 3<sup>RD</sup> CITEE  
ANN JERONO ..... 4<sup>TH</sup> CITEE**

**RULING**

1. This citation relates to the estate of Some Yego (deceased) who died on October 16, 2004 at the age of 67 years. The Citors/Applicants, Reuben Singoei, Rose Some and James Kipkemboi Kemei have filed a citation against David Some, Enock Yego, Jonathan Yego and Anne Jerono. The citation is supported by the affidavits of Reuben Singoei, Rose Some and James Kipkemboi Kemei all dated June 2, 2021.
2. In his affidavit in verification of the proposed citation to accept or refuse letters of administration intestate, the 1<sup>st</sup> Citor states that the deceased was survived by Ludia Yego (deceased), Peter Some (deceased), David Some, Enock Yego, Eunice Chepkosgei (deceased), Jonathan Yego and Anne Jerono and adds that David Some, Enock Yego, Jonathan Yego and Anne Jerono have refused or ignored to take out the letters of administration intestate. He further averred that he is one of the beneficiaries of land forming part of the estate of the deceased herein claiming a purchaser's interest.



3. In her affidavit in verification of the proposed citation to accept or refuse letters of administration intestate, the 2<sup>nd</sup> Citor save for reiterating the contents of the 1<sup>st</sup> Citor's affidavit states that she is one of the beneficiaries of the estate of the late Some Yego being one of his daughter-in-laws, claiming interest in land parcel Plateau/Kapsaret/Block 1 (Aturei)/217.
4. In his affidavit in verification of the proposed citation to accept or refuse letters of administration intestate, the 3<sup>rd</sup> citor save for reiterating the contents of the 1<sup>st</sup> citor's affidavit states that he is one of the beneficiaries of land forming part of the estate of the deceased herein claiming purchaser's interest.
5. The citors desire to take out letters of administration of the deceased's estate.
6. The citation is opposed by Enock Yego the 2<sup>nd</sup> citee vide his affidavit sworn on July 5, 2021 in which he states that the citees are the only surviving dependants of the deceased. That the citors are not dependants and or beneficiaries of the deceased. He further averred that the deceased's free property at the time of his death comprised of all that parcel of land known as Plateau/Kapsaret Block 1 (Aturei)/ 217 measuring 12.57 Hectares or 31.425 acres.
7. He averred that the 2<sup>nd</sup> citor has not established that she was a dependant of the deceased. The 2<sup>nd</sup> citee's case is that the 2<sup>nd</sup> citor has not placed any documentary evidence to prove a creditor interests or any beneficial interest recognized by law.
8. As regards to the 1<sup>st</sup> citor the 2<sup>nd</sup> citee averred that the 1<sup>st</sup> citor does not qualify to be a purchaser claiming interest in the said estate as the sale agreement he has annexed to his affidavit was entered into on January 9, 2005 about 3 months after the death of the deceased herein. He further maintains that the said agreement was never signed by the deceased and that there was no representation from the estate of the deceased. The 2<sup>nd</sup> citee contends that the said agreement relates to LR No. 9909/2 plot No.3 and that no nexus can be drawn between the said plot and parcel of land known as Plateau/Kapsaret Block 1 (ATUREI)/ 217.
9. The 2<sup>nd</sup> citee further averred that the 3<sup>rd</sup> citor's based his claim on an agreement that indicates that he bought land from the 2<sup>nd</sup> citor on November 11, 2019. That the said land is described as Aturei Farm LR No. 217 and which was bought 15 years after the death of the deceased. The 2<sup>nd</sup> citee maintains that the 2<sup>nd</sup> and 3<sup>rd</sup> citors did not have the legal capacity to undertake such dealings as regards to the property of the deceased.
10. The 2<sup>nd</sup> citee contends that the agreement entered into on November 26, 2019 between Victor Tirop Kemei and the 3<sup>rd</sup> citor is not valid as the same was entered into about 15 years after the death the deceased herein and without a grant of letters of administration intestate to administer the said estate. Further that the agreement dated November 22, 2019 between Abraham Kimutai Cheribo and the 3<sup>rd</sup> citor has no binding effect on the estate as the same was entered into without legal capacity as no grant of letters of administration intestate had been issued in favour of the said vendor.
11. The citees urged court to dismiss this citation proceedings stating that:- the citors have not established any creditors or beneficial interests in the said estate so as to seek to have court compel the lawful beneficiaries of the deceased to petition for letters of administration at this time; the citees will proceed to institute succession proceedings at the appropriate time when they deem necessary to distribute the said estate; that the displayed dealings by the citors are clearly evidence of intermeddling which cannot be sanctified by filing of a retrospective grant of letter of administration; the citors have no judicial capacity and mandate to institute the citation as they do not fall within the category of persons contemplated under rule 22 of the *Probate and Administration Rules*; the citors would not be entitled to a grant in the event the citees renounce their rights to the same and thus the citation



proceedings are devoid of judicial basis; the citors have not given a clear definition of their interests to demonstrate if they fall within section 66 of the Law of Succession Act; the citors have not demonstrated any relationship with the deceased and therefore cannot institute citation proceedings or take out a grant of representation with respect to the deceased's estate as they do not fall within the confines of the consanguinity table and lastly that the citation proceedings are in appropriate in that if the citees renounce their rights; based on rule 22 (5) (a) of the Probate and Administration Rules, the Citors will petition for letter of administration and can only sue to enforce dealings where no privity of contract exists between them and the estate of the deceased.

12. Both parties did not file any written submissions.

### Determination

13. From the pleadings, the issue for determination by this court is who is entitled to take out the letters of administration intestate to the estate of the deceased. Should it be the citors or the citees.
14. Rule 22(1) of the Probate and Administration Rules is explicit that:

“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.”
15. Hon. Sitati, J. considered the purpose of citation proceedings in the case of John Osicho v Hana Omolo Osewe & another [2013] eKLR where she held that: -
  - “(11) A citation is a document issued by the probate registry, whereby the person being the claimant (citor) calls upon the person cited (citee) to provide a reason why a particular step should not be taken;
  - (12) citation occur in both contention and non-contentious probate. in non-contention probate, they serve the purpose of bullying along or fast tracking the issue of a grant of letters of administration.”
16. For purposes of the citation, it is sufficient for the Applicant to show that he/she has a bona fide interest in the estate of the deceased to prompt the respondent to action. The Applicant herein concedes that the respondents, David Some, Enock Yego Jonathan Yego and Anne Jerono are the ones entitled to petition for grant in respect of the estate of Some Yego; but that they have failed or neglected to so apply. The 1<sup>st</sup> and 3<sup>rd</sup> applicant's claim a purchaser's interest in the said estate whereas the 2<sup>nd</sup> applicant claims a beneficial interest in the said estate being one of the deceased's daughter-in-laws.
17. From the pleadings before court and my perusal of the sale agreements relied upon by the 1<sup>st</sup> and the 3<sup>rd</sup> citors herein, it is evident that same were entered into after the death of the deceased. It is also not in dispute that the beneficiaries of the deceased have never petitioned for grant of letters of administration with respect to the said estate and therefore the said agreements are clear prove that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> citors are intermeddling with the estate of the deceased in contravention of section 45 of the Law of Succession Act.
18. The 2<sup>nd</sup> citor has alleged that she is a daughter-in-law of the deceased and claims an interest in land parcel number Plateau/Kapsaret Block 1 (Aturei)/ 217 by virtue of being the deceased's daughter-in-law. The 2<sup>nd</sup> citor has however not placed any evidence before this court to show that she in deed the deceased's daughter in law and why she is claiming an interest in the said estate. Among the persons who survived the deceased, and who are still alive are the Citees herein. According to section 66 of the Law of Succession Act, the Citees have a superior right to administer the deceased's estate over the 2<sup>nd</sup>



citor. Going by the provisions of section 66 and Part V of the Act, a daughter in law has no right to inherit the estate of her dead parent in law. It is her children who have a right to inherit by virtue of being grandchildren of the deceased. Similarly, daughters in law have no entitlement to administer the estate of their dead parent in law. That right accrues to their children who are the blood relatives of their deceased grandparent.

19. The citors have also alleged that the citees are intermeddling with the estate of the deceased. They however did not tender any evidence whatsoever to prove the said allegations. More so they have not ascertained their interests if any in the said estate. The applicants do not have the requisite standing to seek the orders that they seek in the present application. It is also worth noting that the court cannot in law force the citees to take out those letters of administration intestate in respect of the subject estate.
20. With the foregoing I find that the application dated June 4, 2021 is not meritorious and is hereby dismissed with costs to the citees.
21. However, the citees are hereby directed to take out letters of administration in the estate within 90 days to enable any claimant against the estate to proceed within the law.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> OF JUNE 2022.**

**E. K. OGOLA**

**JUDGE**

