



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

MISC CITATION CAUSE NO 3 OF 2020

IN THE MATTER OF CITATION TO REFUSE OR ACCEPT LETTERS OF

ADMINISTRATION INTESTATE

KIPCHUMBA RUTTO.....CITOR

VERSUS

SARAH JEPKEMOI LAGAT.....1ST CITEE

TECLA JEBICHII KEITANY.....2ND CITEE

RULING

1. Pursuant to the provisions of section 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules, article 159 (2) (d) of the 2010 Constitution of Kenya 2010 and all enabling provisions of the law, the citor seeks the following orders from this court.

1. An order to grant leave to the citor to amend the citation to accept or refuse letters of administration intestate.
2. An order that the annexed draft of the amended citation to accept or refuse letters of administration intestate be deemed as duly filed upon payment of the requisite fees.
3. An order directing costs to be costs in cause.

2. The application is supported by six grounds that are set out on the face of the notice of motion dated 31st March 2021; with the major grounds being the following. The citation to accept or refuse letters of administration intestate is scheduled for mention on the 19th April 2021. During the hearing of the citation application on 9th March 2021 it was noted that there was an apparent error in the prayers sought in the citation to accept or refuse letters intestate dated 12th June 2020. If the prayers sought are granted as prayed the resulting orders may not be sustainable. It is in the interests of justice that the application be allowed.

3. The application is also supported by the 11 paragraphs supporting affidavit of counsel for the applicant (Edwin K. Mwaita); whose major averments are as follows. He has deposed that in the course of hearing counsel noted that there was an apparent error in the prayers as sought in the said citation to accept or refuse letters of administration intestate.

4. Furthermore, counsel deposed that the prayers as sought may not be sustained if the same are granted as they are, that is, if the application succeeds. He now prays that instead of granting the orders sought to the citor the same should be granted to the citees. Counsel has further deposed: "THAT if the instant application is not allowed then the prosecution of the citation to accept or refuse letters of administration intestate shall be rendered an exercise in futility as the orders so granted may be impossible to execute."

5. Finally, counsel has deposed that the citees will not suffer any prejudice if the instant application is allowed as prayed.

Issues for determination.

6. I have considered the affidavit of the prosecuting counsel for the applicant citor in the light of the applicable law. As a result, I find that the application is not opposed; as the citees have not been participating in these proceedings.

7. However, it is important to bear in mind that the purpose of filing an application for a citation is because the citees have either refused or neglected to take out letters of administration intestate in respect of the estate. In other words, the applicant is forced to apply for letters of administration intestate so that he can administer the estates, if his application is granted.

8. The court cannot in law force the citees to take out those letters of administration intestate in respect of the subject estate.

9. The confusion that has arisen in the instant application is that the applicant has not realized that there is a dispute over the properties of the estate, which has to be resolved first. The applicant has also lost sight of the fact a probate or succession court may only distribute properties that are available for distribution. Any dispute over the properties of the estate must be resolved first by the Environment and Land court. Thereafter the probate or succession court may then be called upon to administer the estate.

10. In the premises, I find that the application is incompetent and is hereby struck out.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT KABARNET THIS 27TH DAY OF JULY 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Sitienei and Mr. Kemboi Court Assistants.

Mr. Mwaita for Citor present.

And in the absence of the Respondents.