



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**CITATION CAUSE NO. 25 OF 2019**

**IN THE MATTER OF THE ESTATE OF THE LATE KADHI ATHMAN ABUBAKAR (DECEASED) C/O THE CHIEF'S OFFICE, MARIKEBUNI LOCATION – KILIFI IN THE REPUBLIC OF KENYA**

**IN THE MATTER OF PETITION FOR LETTERS OF ADMINISTRATION AND CITATION OF THE SAID ESTATE OF KADHI ATHMAN ABUBAKAR**

**BETWEEN**

**ABDULLAH MANGI MOHAMED .....CITOR/APPLICANT**

**VERSUS**

**NURU KADHI ABUBAKAR.....CITEE/RESPONDENT**

**Coram: Hon. Justice R. Nyakundi**

**Ricahrd O. advocate for the Citor/Applicant**

**Gikandi advocate for the Citee/Respondent**

**R U L I N G**

The applicant in this Cause has moved the Court vide notice of motion filed in Court on 10.3.2021 seeking one substantive order in respect of a citation for purposes of taking out Letters of Grant of Administration in respect of the **Estate of Kadhi Athman Abubakar**. It is averred in the affidavit of **Abdullah Mangi Mohamed** that the respondent has failed to take out Letters of Administration; **whereas it further appears by the affidavit that the said Abdullah Mangi Mohamed has been residing in land parcel known as portion number original 539/III/MN Mtwapa which he claims to be family land which was fraudulently subdivided by the deceased and some portions illegally transferred and registered in the deceased names shortly before he died. Now this is to direct that the said Nuru Kadhi Abubakar do within fifteen (15) days after service hereof on you (inclusive of the date of such service) do cause an appearance to be entered for yourselves in the Malindi Registry and accept or refuse Letters of Administration of all the estate which by Law devolves to and vest in the personal representatives of the deceased or show cause why the same should not be granted to the said Abdullah Mangi Mohamed.**

The respondent vehemently objected to the grant or order on the making of the grant of Letters of Administration to the applicant. The respondent further avers that all issues involving the cause of action intended to be prosecuted by the applicant have been dealt with by the Court of Appeal in a Judgment delivered on 26.4.2018 and a preceding Judgment referenced as **ELC No. 109 of 2012** dated 31.10.2014.

**Decision**

Having regard to all the circumstances, surrounding this protracted litigation in my Judgment and in light of the reasons and findings made by both the **ELC Case No. 109 of 2012** and subsequent Court of Appeal Decision in **CA No. 95 of 2016** the following issues stand out distinctively:

- (1). Apparently, Land Parcel No. 539/III/MN was declared as registered in the name of the Late Kobana Salim.***
- (2). Rehema Shee Ali, was nevertheless a wife to Kadhi Athman Abubakar.***
- (3). Thereafter Kobana Salim passed on and for undisclosed reasons no Letters of grant of Administration were taken out to administer the intestate estate.***

(4). *In the interim a sale agreement was generated by Rehema Shee Ali purporting to sell or transfer the suit land although no letters of grant of Administration had been taken out by her at the time of executing the sale agreement.*

(5). *That sale became a subject of litigation in ELC NO. 109 of 2012.*

(6). *In that Judgment the Court decreed Maalim Mohamed Dima, Samow Mohamed be evicted from the suit land referred Number 6997/111/MN and in default they be evicted and the structures being occupied by the plaintiff or the 2<sup>nd</sup> defendants as identified herein be demolished at their own costs.*

(7). *The plaintiff – Maalim Mohamed Dima and the 2<sup>nd</sup> defendant, Samon Mohamed pay the 1<sup>st</sup> defendant Kadhi Athman Abubakar the costs of the counterclaim.*

From these facts, I find it somewhat difficult to appreciate the Learned counsel **Mr. Gikandi** reasoning that the matter is *res judicata* by virtue of the ELC and Court of Appeal Judgments. As it comes out from the affidavits witness statements to the Environment and Land Court's proceedings, both Judgments of the Superior Courts annexed show the deceased estate remains intermeddled without an appointment of an administrator in terms of Section 83 of the Law of Succession. As a matter of fact, the respondent **Nuru Kadhi Abubakar** is cited as the daughter of the deceased **Kadhi Athman Abubakar**. She is therefore entitled to inherit a share of the estate left behind by the deceased as a recognized dependent duly defined in Section 29 of the Act.

By this citation, the respondent has declined to take out Letters of grant of Administration intestate. That therefore, gives room to the estate being wasted or intermeddled in absence of an administrator to act on behalf of the estate intestate. With respect to **Mr. Gikandi** for the respondent, I do not agree with his interpretation of the Judgments of the Court referred to in this proceedings.

I find the operative words under this cause is whether, grant of Letters of Administration have been issued to any of the heirs or any other administrator to the deceased estate. To my mind and perusal of the litigation history, no making of the grant of Letters of Administration has been issued by this Court or any other person donating power to an appointed administrator to act on behalf of the deceased estate.

What then is the conclusion to be drawn on this part of the application claim? I think it is necessary or desirable that the applicant be issued with grant of Letters of Administration founded on the circumstances of this case as an administrator to the deceased intestate estate. The result of the whole matter is that the objector contention fails and in my Judgment the applicant is entitled to take out Letters of Grant to administer the estate survived of the deceased **Kadhi Athman Abubakar**.

It is so ordered.

**DATED, SIGNED AND DISPATCHED via email AT MALINDI ON 27<sup>TH</sup> DAY OF AUGUST 2021**

.....

**R. NYAKUNDI**

**JUDGE**

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