



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**MISCELLANEOUS CIVIL APPLICATION NO. 186 OF 2011**

**IN THE ESTATE OF:**

**DAVID OTWANE IMAET.....DECEASED**

**BETWEEN**

**STEPHEN OKITWI OKODOI.....CITOR/RESPONDENT**

**AND**

**ELIZABETH IGULE IMAET.....CITEE/APPLICANT**

**RULING**

1. **Elizabeth Igule Imaet**, the citee/applicant herein filed an application dated 21<sup>st</sup> February 2018 under Order 10 Rule 11 of Civil Procedure Rules and Rules 22(1) & 63 of the Probate and Administration Rules. She is seeking the following orders:

- a) That the ex-parte proceedings conducted on 24<sup>th</sup> July 2012 and the ex-parte issued on the 23<sup>rd</sup> August 2012 be set aside unconditionally.
- b) That the Grant of Letters of Administration intestate and the Certificate of Confirmation of Grant issued to the citor vide Succession Cause No. 342 of 2012 which are founded on the ex-parte proceedings conducted herein and the consequent subdivision and or partition of land parcel No. SOUTH TESO/OSURETTE/809 into new parcel Nos. SOUTH TESO/OSURETTE/2917& 2918 be cancelled.
- c) That costs of this application be provided for.

2. The application is premised on the following grounds:

- a) That the citee was not served with the citation.
- b) That the citee was never served with any hearing notice for the hearing of the citation.
- c) That the citor/respondent relied on the ex parte proceedings to file Busia High Court Succession Cause 342 of 2012.

3. The application was opposed by the citor on the following grounds:

- a) That the application is frivolous and an abuse of the court process
- b) That there exists a similar application in High Court Succession Cause 342 of 2012.

4. I have perused the file and noted that on 24<sup>th</sup> July 2016 before Judge Kimaru issued orders complained of, he satisfied himself that there was service. Joseph Orata Kweyu disowned the affidavit of service which was filed on 24<sup>th</sup> November 2011. Having compared the signature in the disputed affidavit and the undisputed one in the affidavit dated 26<sup>th</sup> September 2018, I make a finding that he indeed signed the affidavit dated 24<sup>th</sup> November 2011. The citee was therefore served contrary to her contention that she was not.

5. The purpose of a citation is to notify a person who is entitled to a grant but has failed to file a succession cause to do so. Failure, the person citing him may do so. Once this purpose for the miscellaneous file has been achieved, the file is closed. This means the moment the judge issued orders to the citor, this file's purpose was fulfilled. Any issues that may arise in respect of the estate of the deceased, must be addressed in the succession cause that has been filed. In the instant case, the applicant is aware of High Court Succession Cause 342 of 2012. She has filed an application therein. It is therefore mischievous to attempt to open this miscellaneous file.

6. This miscellaneous file is ordered closed. The application is dismissed with costs

**DELIVERED and SIGNED at BUSIA this 25<sup>th</sup> day of February, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**