



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CITATION SUCCESSION CAUSE NO. 1 OF 2017**

**IN THE MATER OF THE ESTATE OF MAXWELL OTIENO (DECEASED)**

**CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE**

**RULE 21 PROBATE AND ADMINISTRATION RULES**

**BETWEEN**

**NZAMBA KAVILI.....APPLICANT**

**AND**

**ROSE ANYANGO JUMA.....RESPONDENT**

**RULING**

1. Through a notice dated 8<sup>th</sup> February, 2017 the Deputy Registrar of this court at the behest of the Citor, Nzamba Kavili issued notice to the Citee, Rose Anyango Juma directing her to, within 15 days of the notice, accept or refuse letters of administration of the estate of the deceased Maxwell Otieno or show cause why the letters of administration should not be granted to the Citee.

2. The Citor later sought and obtained the leave of the court to advertise the notice in a daily newspaper. The advertisement was carried in the Daily Nation newspaper of 22<sup>nd</sup> August, 2017. As at the time this matter came up before me on 1<sup>st</sup> March, 2018 no response had been filed by the Citor.

3. Rule 22(1) of the Probate and Administration Rules provides 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.”**

4. Considering the facts placed before the court, can the Citor be said to be a person entitled to a grant in the event the Citee renounces her right to the grant?

5. The answer is in the negative. The Citor did not purchase the property from the deceased. He bought the property from somebody who promised to take out letters of administration in respect to the estate of the deceased. The estate of the deceased is thus not indebted to him and he therefore has no right to seek a grant in regard to the deceased’s estate.

6. Musyoka, J in the case of **In the matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR** stated that:

**“[T]he property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.**

**In this matter the respondent sold property belonging to a dead person without authority as letters of administration had not yet been made to him. The fact of having petitioned for the letters did not clothe him with any authority...**

**As the respondent had no authority to sell the property in question, Felix Kinuthia acquired no interest in it at all as the**

**seller had no title to it whatsoever. A buyer, such as Felix Kinuthia, is not in the same footing with a creditor, for the interest he alleges to have acquired in the estate was not acquired from the deceased during his lifetime or from a person authorized to sell the property. It should be noted that even where a grant of representation has been obtained, the grant-holder has no power to sell any immovable asset before confirmation of the grant.”**

7. The Citee had no authority to dispose of the land the Citor desires to have transmitted to him from the estate of the deceased. Any claim the Citor has is against the Citee and there is no way in which such a claim can now be said to be a claim against the estate of the deceased. In short, there is no basis for finding that the Citor is entitled to a grant to the estate of the deceased.

8. The Citor’s prayer to be allowed to take out letters of administration in respect to the estate of the deceased has no legal foundation. That being so, the only order available is to strike out the citation proceedings. The citation proceedings are thus struck out with no orders as to costs.

**Dated, signed and delivered at Malindi this 19<sup>th</sup> day of April, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**