



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 863 OF 2016**

**IN THE MATTER OF THE ESTATE OF SHEM MARCAAD**

**NYAMAI ALIAS SHEM M. OWITI NYAMAI ALIAS**

**SHEM M. O NYAMAI (DECEASED)**

**RULING**

1. By a citation filed in court on 19<sup>th</sup> May 2016 pursuant to Section 62 of the Law of Succession and rules 21, 22 and 23 of the Probate and Administration rules, Zaina Rashid Mbonika herein referred to as the citor, cited Jenniffer Mary Jagire, Patrick Nyamai, Julius Nyamai and Jackline Nyamai being wife and children respectively to the deceased herein Shem Marcaad Nyamai alias Shem M. Owiti to show cause why they should not cause an appearance and accept or refuse to take out letters of administration in respect of the aforesaid estate and in default the citor to take out the same being a wife to the deceased.

2. Every effort to serve the citees having failed, the citor moved the court vide a notice of motion dated 15<sup>th</sup> November 2017 seeking to effect substituted service by way of advertisement. Subsequently, the court granted the orders sought on 9<sup>th</sup> March 2018 directing service of the citation through two separate daily newspapers within 15 days. Consequently, service was done through the daily standard and nation newspapers of 27<sup>th</sup> March, 2018.

3. Despite service by way of advertisement, the citees did not respond hence the prayer to allow the citor to institute a petition for a full grant. Pursuant to rule 21(5) of the Probate and Administration rules, the citees are supposed to have entered appearance within 15 days which period has since expired without any appearance. The net effect therefore is and in compliance with rule 22(5) (a) of Probate and Administration rules, the citor is entitled to petition for a full grant to herself.

4. Having been given an opportunity to exercise their right in order of priority under Section 66 of the Law of Succession to take out a grant of representation and the same having failed, this court has no choice but to direct the citor herein to file a petition for a full grant of letters of administration intestate in respect of the deceased's estate within 30 days from the date of delivery of this ruling the absence of consent from the citees/beneficiaries notwithstanding.

Order accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF MAY, 2018.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

M/S Nyaguthie holding brief for.....Counsel for the applicant

Edwin.....Court Assistant