



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

P & A CITATION NO.540 OF 2015

IN THE MATTER OF THE ESTATE OF WAMBUA KAMANI (DECEASED)

WAYUA WAMBUA.....CITOR

VERSUS

PENINAH CAROL MUINDE.....RESPONDENT

RULING OF THE COURT

1. The Citor herein has filed a Citation dated 26th August,2015 seeking for an order to cite the citee herein and compelling her to enter an appearance herein and thereafter accept or refuse letters of administration of all the estate of **RONALD MUINDE MUSAU** or show cause why the same should not be granted to the Citor herein **WAYUA WAMBUA**.

2. The Application is supported by an annexed affidavit of the Citor sworn on even date and the following grounds namely:-

(i) That the Citee is the wife/widow of the late RONALD MUINDE MUSAU who died on 4/4/2014 and the Citee is one of the persons entitled to obtain Grant of Letters of Administration in respect of her late husband.

(ii) That the Citor is the wife/widow of the late WAMBUA KAMAMI and that she is the administrator of the estate of her late husband having obtained Grant of Letters of Administration vide Machakos HC succession Cause No.564 of 2008.

(iii) That the Citor's husband was the registered proprietor of land title No. KALAMA/IIUNI/898 and prior to his demise her said late husband had sold portion of the subject land to the said RONALD MUINDE MUSAU.

(iv) That the said land title was the subject of proceedings in Machakos HC Succession Cause NO.564 of 2008 wherein the Grant made to the Citor was confirmed on 14/05/2010.

(v) That pursuant to the issue of certification of confirmation of the Grant the subject title NO. KALAMA/IIUNI/898 was transmitted and registered in the names of RONALD MUINDE MUSAU as the sole proprietor.

(vi) That the Citor came to realize that she had been duped by the said RONALD MUINDE MUSAU at the time of distribution of the estate of her late husband and consequently she moved the succession court to revoke the confirmed Grant.

(vii) That the said RONALD MUIINDE died before the determination of the said summons which seeks to reverse the distribution of the estate of the Citor's late husband on account of fraud.

(viii) That the Citor intends to substitute the said RONALD MUIINDE MUSAU with the Citee upon her appointment as the Administrator of the estate of her late husband.

(ix) That the Citee has failed to respond to the Citor's invitation to resolve the dispute hence the necessity of these proceedings.

3. The Citor's case is that she is the administrator of the estate of her late husband one **WAMBUA KAMAMI** who had sold a portion of his land to the husband of the Citee herein. The Citor further avers that she duly prosecuted the Succession Cause on the estate of her late husband while the Citee's husband assisted her through. The Citor further states that during the confirmation of grant, the Citee's husband seemed to have duped her in the whole process in that she later learnt the Citee's husband had taken up the whole parcel of land that belonged to the Citor's husband instead of only a portion thereof. The Citor then filed an Application for the revocation of the confirmed grant but however the same could not be heard as the Citee's husband who was the purchaser had died. The Citor states that several demands to the Citee to take up letters of administration on behalf of her late husband has proved futile thereby forcing the Citor to file the present application.

4. Determination:

I have considered the Citor's Application plus the affidavit in support thereof. It is noted that the Citee herein upon being served with the citation has failed to enter an appearance and respond to the Citor's application. Hence it would appear that the Citation is unopposed. Under the Provisions of Rule 22 of the Probate and Administration Rules, 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. Indeed the Citor herein has established that she is the Administrator of the estate of the late **WAMBUA KAMAMI** who had sold part of his land parcel **KALAMA/IIUNI/898** to one **RONALD MUIINDE MUSAU** who is the late husband of the Citee. The Citor has explained that the Citee's husband as purchaser had fraudulently acquired the whole parcel and had taken advantage of the ignorance and illiteracy of the Citor and other beneficiaries. The Citor has explained that she has already filed for the revocation of the confirmed grant so as to rectify the distribution of the estate of the late **WAMBUA KAMAMI**. The Citor has further explained that the said **RONALD MUIINDE MUSAU** has since died and that she needs to substitute him with the Citee so that her Application for revocation of confirmed grant could be heard. Indeed if the remaining portion of the land sold is to revert to the Citor, I find she is a person who would herself be entitled to a grant in the event of the Citee renouncing her right thereof. I am therefore satisfied that the Citor has made a good case for her quest to proceed and seek for letters of grant of the estate of the late **RONALD MUIINDE MUSAU** since the Citee has failed to accept or refuse letter of administration and further failed to show cause why such letters should not be granted to the Citor herein **WAYUA WAMBUA**. Hence the Citor's Application dated 26th August, 2015 succeeds. The Citor's is now allowed to proceed and apply for letters of Administration to the estate of **RONALD MUIINDE MUSAU**. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Machakos this 26th day of APRIL 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Mburu for Kitonga for Citor.....

C/A: Kituva.....