



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CITATION CAUSE NO.773 OF 2015**

**IN THE MATTER OF THE ESTATE OF MUNYAO KIOKO MUASYA (DECEASED)**

**CHRISTINE MUENI MUNYAO .....PETITIONER**

**VERSUS**

**SYOKWIA MUNYAO .....OBJECTOR**

**RAPHAEL MUTUA MUNYAO .....APPLICANT**

**RULING OF THE COURT**

1. Raphael Mutua Munyao has filed an Application dated 20/09/2016 pursuant to the Provisions of Section 47 of the Law of Succession and Rule 73 of the Probate and Administration rules seeking for the following prayers:-

- 1. THAT this Honourable court be pleased to issue orders substituting the Petitioner herein CHRISTINE MUENI MUNYAO with the Applicant herein RAPHAEL MUTUA MUNYAO.***
- 2. THAT costs of the Application be in the cause.***

The Application is supported by an annexed affidavit of the Applicant sworn on even date and further on the following grounds:-

- (a) The Petitioner herein CHRISTINE MUENI MUNYAO is deceased.***
- (b) The deceased herein the subject of these proceedings had two wives and thus two houses.***
- (c) The Applicant is a son to the Petitioner herein who has subsequently died.***
- (d) That it is imperative that the orders sought be granted to enable proper administration of the estate of the deceased.***
- (e) That the Applicant hereby undertakes to faithfully administer the estate of the deceased and render a true account whenever called upon.***

2. The Application is opposed by the Objector/Respondent who filed a replying affidavit sworn on 8/11/2016 and which raised the following grounds of objections:-

- (a) That the Petitioner sought to be substituted herein had earlier filed succession cause No.686 of 2015 in which the Respondent had filed objection which is yet to be determined.***

***(b) That it is the same Petitioner herein who had filed a citation against the Respondent in these proceedings and in which she had failed to disclose all the assets of the deceased.***

***(c) That the Petitioner in Succession Cause 868 of 2015 should have included the Respondent herein as an administrator for the proper administration of the estate of the deceased.***

***(d) That the objection lodged by the Respondent in Succession No.868 of 2015 be dealt with first before the present application is heard.***

***(e) That the Application be dismissed with costs.***

3. Parties filed written submission which I have carefully considered. I have also considered the Applicants Application and the rival affidavits. Certain issues appear not to be in dispute regarding this matter. Firstly that an earlier **Succession Cause being 686 of 2015** had been instituted by the Citor herein **CHRISTINE MUENI MUNYAO** and in which the Citee herein **SYOKWIA MUNYAO KIOKO** had lodged Objection dated 11/1/2016 to the making of grant which is still pending for determination. Secondly, the Citor herein Christine Mueni Munyao who is the Petitioner in **Succession Cause 686 of 2015** has since died as evidence by the copy of Certificate of death annexed to the Applicant's Affidavit. The issues necessary for determination are as follows:

***(i) Whether the Applicant has made out a case to be substituted so as to take up the place of the deceased Petitioner and or Citor.***

***(ii) Whether it is necessary to consolidate Succession Cause 773 of 2015 and 686 of 2015 for purposes of disposing of the pending objection and citation herein.***

4. As regards the first issue, the Applicant has sought to be allowed to come on board to take up the place of the deceased Petitioner or Citor Christine Mueni Munyao who has since died. A copy of the certificate of death has been shown to court. I find there is no prejudice to be suffered by the Respondent citee if the request for substitution is granted. There is need to ensure that there is no vacuum in the administration of the estate of the deceased to which these proceedings relate. The Applicant once he takes up the position of the deceased Petitioner/Citor will then be in a position to address the issue and concerns that have been raised by the Respondent/Citee. Under the Provisions of Section 47 of the Law of Succession Act as well as rule 73 of the Probate and Administration Rules, the High court has powers to entertain any application and determine any dispute under the said Act and to pronounce such decrees and make such orders therein as may be expedient. Further the High Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court.

5. As regards the second issue, it is noted that an earlier succession cause **number 686 of 2015** was filed by Christine Mueni Munyao before she again filed the present citation intended to cite the citee herein **SYOKWIA MUNYAO KIOKO** to accept or refuse or take a grant. Upon the citee being served with the citation notice, she duly entered an appearance through her learned Counsel B. M. Mungata & Co. Advocates. As further directions were being awaited pursuant to Rule 22 of the Probate and Administration rules, the Citor unfortunately passed on and which then forced the Applicant herein to file the present Application for substitution. The citee is opposed to the Applicant's Application and wants her objection dated 11/1/2016 in **Succession Cause No. 686 of 2015** determined. Indeed the Applicant seems not opposed to the citee presenting her objection aforesaid. It would therefore appear that the proper course for the citation ought to have been filed in **Succession 686 of 2015** instead of opening another Succession Cause as herein. It becomes imperative for these two succession causes to be consolidated together so that all the issues in controversy may be thrashed out. Indeed both the Applicant and Respondent are in agreement that they should proceed and prosecute the Respondent's objection dated 11/1/2016. This being the position, the two Succession Causes require to be consolidated and heard in one file.

## **6. ORDERS:**

For the foregoing Observations I find the Applicant's Application dated 20/09/2016 has merit. The same is allowed on the following terms:-

***(a) CHRISTINE MUENI MUNYAO (deceased) is hereby substituted with RAPHAEL MUTUA MUNYAO to act as Petitioner or Citor as the case may be in the Estate of Munyao Kioko Muaysa.***

***(b) Succession Cause numbers 686 of 2015 ad 773 of 2015 are hereby ordered consolidated and that succession cause 686 of 2015 shall be the parent file.***

***(c) Parties do proceed to fix matter for directions on the way forward as regards the citation herein and objection to making of the grant.***

***(d) Costs shall be in the cause.***

It is so ordered.

Dated, signed and delivered at Machakos this 25<sup>th</sup> day of APRIL 2017.

**D. K. KEMEI**

**JUDGE**

**In the presence of:-**

.Mukula for Muysimi for Applicant.....

C/A: Kituva .....