



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**SUCCESSION CAUSE NO. 4 OF 2013**

**MWASYA MWENDWA .....CITOR**

**VERSUS**

**ESTHER KATHINI MWINZI.....CITEE**

**RULING**

This is a citation brought under the Law of Succession Act (Cap 160). It was filed under the Probate and Administration Rules, though the specific rule was not cited. There is however provision under Rule 21 for bringing such proceedings in court.

The citation is opposed. It is contended by the cite herein that the suit wherein the deceased was a party has already abated. It is also not denied that the deceased was the husband of the citee. It is not denied that the case Civil Mwingi Civil Suit No. 231 of 2008 between the citor and the husband of the citee had not been finalized, and that the citor is the plaintiff therein. It is not denied that neither the citee nor her children had applied for letters of administration in the estate of the deceased Simon Mwinzi Mwenga.

In my view, though the citee has opposed the application, the interests of justice will best be served if the application is granted. Such is the only way to progress the civil case filed against the citees late husband. In the best interests of substantive justice therefore under Section 3A of the Civil Procedure Act (Cap. 21) and Article 159 (2) (b) of the Constitution of Kenya 2010, I allow the application and appoint the citee Esther Kathini as the administrator of the estate of her husband late Simon Mwinzi Mwenga. Each party will bear their respective costs of these citation proceedings.

**Dated and delivered at Garissa this 27<sup>th</sup> April, 2015**

**GEORGE DULU**

**JUDGE**