



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CITATION NO. 1 OF 2015

IN THE MATTER OF THE ESTATE OF DISI OLE KAMWARO (DECEASED)

BENJAMIN MELET OLE KAMWAROCITOR

-VERSUS-

JOHN KERRA OLE KAMWAROCITEE

RULING

1. Before me is the application brought by **Benjamin Melet Ole Kamwaro** under Rules 29 (sic), 59 (5) and 61 of the Probate and Administration Rules. The key prayers are:
 - a. **THAT John Keraa Ole Kamwaro who is the eldest son of the above-named Disi Ole Kamwaro (Deceased) do show cause why he should not take out letters of administration to the deceased's estate and that in default of doing so, this Honourable Court do compel him to do so as to enable the estate of the deceased to be administered effectively.**
 - b. **THAT in the alternative, this Honourable Court does authorize the Petitioner/Applicant herein to take out letters of administration to the deceased's estate.**
2. The application is supported by the affidavit sworn by the Applicant Citor. The Citee Respondent **John Keraa Ole Kamwaro** filed an affidavit in reply but did not attend the hearing of the application despite notice.
3. The undisputed background to the present application is as follows. The Citor and Citee are siblings and surviving children, together with a sister Ntito Ene Disi, of **Disi Ole Kamwaro** (deceased) who passed away intestate in 1993.
4. The said deceased owned a large parcel of land described as **Cis-Mara/Sakutiek/122**. It would appear that both the Citor and Citee reside on and/or use portions of the said land parcel. However, no letters of administration have been taken out concerning the estate.
5. I have considered the two affidavits sworn by the Citor and Citee respectively. While the former blames the Citee who is his elder brother for not initiating the process regarding the administration of their later father's estate, the latter alleges that the Applicant has neither given consent nor provided funding towards the administration exercise. He seems to believe that the true motivation on the part of the Citor is dissatisfaction with the manner in which their late father shared the land between the siblings before his death.
6. Citations are covered in Part VI of the Probate and Administration Rules but the cited Rule 29

although in the said part seems not to have any relevance to the application before the court. Rules 21 to 23 apply to instant matter.

7. In their affidavits, the Citor and Citee clearly express a willingness to accept or take a grant in respect of the estate of the deceased. Both have equal priority as sons of the deceased. They have been utilizing assets belonging to the estate for over 20 years but have not applied for its administration. No good reasons are given for this state of affairs. The conduct borders on intermeddling with the estate. They blame blaming each other for the impasse but excuses cannot take away their obligation to take out letters or alternatively to renounce their right to the same. Further delay can only complicate matters, with grave consequences to the estate.
8. In the circumstances of this case, I will direct that both the Citor and Citee do jointly petition for a grant of letters of administration to this court within a period of 45 days of today's date, failing which, they will be deemed to have renounced their right to apply, and the surviving daughter of the deceased, Ntito Ene Diso or the Public Trustee, in that order will be at liberty to file for letters of administration of the estate of the deceased.
9. A copy of this ruling to be served on the Citee and Ntito Ene Disi as well as the Public Trustee, Narok.

Delivered and signed at Narok this 26th day of May, 2015.

In the presence of:

For Citor/Applicant

For Citee/Respondent

Court Assistant Stephen

C. W. MEOLI

JUDGE