



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 747 OF 2014

IN THE MATTER OF THE ESTATE OF DANIEL OKUMU JUMA

AND

IN THE MATTER OF (CITED) CYNTHIA JUMA, GODWIN JUMA, ALLAN JUMA

AND LINDA JUMA

CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION

INTESTATE

RULING

On 11th August 2014 Joseph Ooko Bonyo, the Citor, took out a citation to accept or refuse letters of administration intestate against Cynthia Juma, Godwin Juma, Allan Juma and Linda Juma who he described as the survivors of Daniel Okumu Juma, the deceased, who he alleged had sold a piece of land to his mother Roslin Adoyo Aroko, also deceased, but who have now refused to transfer the land to him and his siblings. He relied on a limited grant ad litem issued to him by this Court on 9th June 2014 and the alleged sale agreement between his deceased mother and Daniel Okumu Juma. An affidavit of service sworn by Nadebu P. Caleb, process server, on 18th September 2014 indicates that the summons was served upon Godwin Juma on 18th September 2014 and that he accepted service on behalf of the other Citees. However none of them entered appearance.

Citation to accept or refuse or to take a grant is provided for under rule 22(1) of the Probate and Administration Rules which states as follows:-

"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."

This rule presupposes that the Citor is a person who would himself be entitled to a grant. The question then is whether the Citor here is such a person. He has founded his application on a sale agreement between the deceased and his mother meaning that he is not a kin of the deceased. In other words he has no relationship with the deceased that would otherwise entitle him to the letters of administration in respect of the estate of the deceased. The sale agreement would of course be subject to proof. More importantly however is that he relies on a limited grant to "represent his mother's estate in this matter." That in my view is irregular. Such limited grants are issued by the Court under rule 14 of the Fifth Schedule. Such a grant is limited to either defending or filing suits and indeed the grant issued to him was limited for purposes of filing suit. In my view these proceedings are not a suit as envisaged in rule

14 of the Fifth Schedule. Granted that under rule 16 of the Fifth Schedule the Court has power to appoint a person not normally entitled to a grant to administer an estate or any part thereof, I regret that that is not the application before me.

Even had the Citor been properly constituted to represent the estate of his deceased mother in this matter his application would not have succeeded for want of proper service as is required under Rule 21(3) of the Probate and Administration Rules. The same is dismissed. No order for costs as there was no appearance.

Signed, dated and delivered at Kisumu this 24th day of August 2015

E. N. MAINA

JUDGE

In the presence of:-

Mr. Kouko for Ngala for the Citor

N/A for the Citees

CC: Moses Okumu