



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2763 OF 2008**

**AND**

**IN THE MATTER OF DAMARIS NJERI KIMANI – DECEASED**

**RULING**

1. The proceedings herein relate to the estate of Damaris Njeri Kimani who died on 14th November 2007.
2. The matter commenced by way of citations issued on 28<sup>th</sup> November 2008, at the instance of one Stephen Kimani Waiganjo in his alleged capacity as widower of the deceased. The citations were issued upon Hellen Wakarindi and Jamleck Mwangi Kimani.
3. From the letter dated 20<sup>th</sup> February 2008 from the chief of Githurai Location, the deceased was survived by ten (10) children. The two citees are among the ten.
4. From the record I do note that the citations were indeed served as the citees filed papers to place themselves on record. Jamleck Mwangi Kimani had his advocates file a notice of appointment dated 2<sup>nd</sup> March 2009, while Hellen Wakarindi filed an entry of appearance to citation dated 17<sup>th</sup> January 2009. She followed this up with an affidavit sworn on 2<sup>nd</sup> March 2009 and filed in court on the same day.
5. On 3<sup>rd</sup> February 2009, an application dated 26<sup>th</sup> January 2009 was lodged in court by the citor seeking to restrain the citees from interfering with the estate of the deceased especially from collecting rents from certain specified properties. The citees filed their replies to the said application.
6. The application dated 26<sup>th</sup> January 2009 was resolved on 27<sup>th</sup> July 2009 when consent orders were recorded before Gacheche J. by all three parties to the citation proceedings.
7. The said consent order was to the following effect:-
  - a. Messrs. Setmark Properties Ltd was appointed to collect rental income in respect of Plots Nos. 949 situated at Githurai 45 and 113/381 in Pipeline Embakasi;
  - b. The rental income so collected was to be deposited in court on a monthly basis;
  - c. The fees payable to Messrs Setmark Properties was to be deducted from the sums collected on a quarterly basis and was not to exceed the monthly collected income;

- d. The second citee, Hellen Wakarindi, was to draw a sum of 50,000.00 from Messrs Setmark Properties Ltd from the rental income for August, 2009, and thereafter a sum of Kshs.10,000.00 per month until the application is heard and determined; and
- e. The parties were to nominate three (3) persons to be appointed administrators of the estate, if found acceptable by the court.
8. The said consent was executed by counsel for the citor, counsel for the second citee and by the 1<sup>st</sup> citee personally.
9. The next event came on 11<sup>th</sup> December 2009 when the 1<sup>st</sup> citee filed a summons of even date seeking several orders. She wanted several persons to be restrained from interfering with the estate pending the hearing and determination of her application. She also wanted accounts to be filed by the lawyers for the citor, among other orders.
10. On 13<sup>th</sup> April 2011, she filed another application seeking committal to civil jail of the directors of Messrs. Setmark Properties Ltd, leave to bring committal proceedings was granted by Maraga J on 13<sup>th</sup> April 2011. The application was argued before Lenaola J who dismissed it on 8<sup>th</sup> July 2011. In the ruling Lenaola J complained about the heavy litigation in this matter yet no petition for grant of letters has even been filed.
11. Despite that the 1<sup>st</sup> citee has come to court by an undated application filed in court on 17<sup>th</sup> March 2014. She would like family members evicted from estate property, she would like to be allowed to manage one of the assets and to be granted a maintenance fee of Kshs.20,000.00 for food, shelter, education for her children and medication. She argued this application on 31<sup>st</sup> March 2014.
12. There has been herby litigation in this matter where several orders have been made yet the main succession cause has not even commenced. All there is on record is a citation. Directions on the citation have not been taken and none of the parties have filed a petition for grant of representation. There is certainly clear abuse of process. No further orders should be made with respect to the administration of the estate of the deceased before administrators have been appointed or at any rate before a petition for grant has been filed. I even doubt whether the orders now in place are enforceable where they were made on the basis of a citation.
13. For the reasons that I have given above, I find no basis upon which I can grant the orders sought by the 2<sup>nd</sup> citee. She has no legal status to pray for the eviction of family members from the estate property nor to manage estate property for as long as she is not the administrator of the estate. Orders for her maintenance cannot equally be made so long as there is no administrator in place for there would no one to execute them.
14. To unlock the impasse in this matter, it is imperative that the process of appointment of administrators should start in earnest. To move the matter forward I will make the following orders:-
  - a. That the application dated 17<sup>th</sup> March 2014 be and is hereby dismissed with not orders as to costs;
  - b. That the citor, Stephen Kimani Waiganjo, and the two citees, Hellen Wakarindi and Jamleck Mwangi Kimani shall in the next twenty (20) days file a joint petition for grant of letters of administration intestate in respect of the estate of the deceased;
  - c. That in default of (2) above, the 2<sup>nd</sup> citee, Hellen Wakarindi shall be at liberty to apply singly.
  - d. That the matter shall be mentioned after twenty days for compliance.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF April, 2014.**

**W. MUSYOKA**

**JUDGE**

**No appearance for the applicant.**

**No appearance for the 1<sup>st</sup> respondent.**

**No appearance for the 2nd respondent.**