



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2557 OF 2012**

**IN THE MATTER OF THE ESTATE OF JOSIAH MULI WAMBUA – DECEASED**

**RULING**

1. Josiah Muli Wambua died on 27<sup>th</sup> March 2012 at the age of 89. There is a letter on record from the Chief of Kanzalu Location where he hailed from. It lists seven (7) persons as the survivors of the deceased, being -
  - a. David Mutua, (son) deceased;
  - b. Philip Musembi Wambua, son;
  - c. Mary Waeni Wambua, daughter;
  - d. Rose Kamene Kiilu, daughter;
  - e. Janet Kanini Weru, daughter;
  - f. Michael Nthenge Wambua, daughter; and
  - g. Happy Koki Wambua, daughter.
2. Representation to the estate was sought on 25<sup>th</sup> October 2012 by three of the survivors – Philip Musembi, Mary Waeni and Happy Koki. The name of David Mutua, deceased, was omitted from the petition as he did not survive the deceased. The petition is supported by two consents executed by two of the three survivors who were not applying for grant – that is to say Rose Kamene Kiilu and Janet Kanini Weru. There is no record of a consent by the third survivor who is not a petitioner, Michael Nthenge Wambua.
3. When the matter was placed before the Deputy Registrar on 2<sup>nd</sup> November 2012, she directed that the petitioners ought to disclose whether David Mutua Wambua, deceased, had been survived by either spouse or children, and to avail the consent by Michael Nthenge Wambua.
4. In response to the Deputy Registrar's concerns, one of the petitioners, Mary Waeni Wambua, swore an affidavit on 6<sup>th</sup> February 2013, filed in court on 8<sup>th</sup> February 2013, stating that David Mutua Wambua had been mentally retarded, had not married and did not have children. Regarding Michael Nthenge Wambua, she averred that a consent had been availed to him for signature but he did not sign it.
5. After that explanation counsel for the petitioners wrote to the Deputy Registrar asking the court to

- approve the petition for gazette. The letter by the petitioner's advocates is dated 7<sup>th</sup> February 2013. It was received by the court on 8<sup>th</sup> February 2013. On 11<sup>th</sup> February 2013, the Deputy Registrar minuted that petitioners should furnish the court with evidence of service of a citation on Michael Nthenge Wambua.
6. That prompted the petitioners to cause the court to issue a citation for service on Michael Nthenge Wambua. They did so by an affidavit sworn by the three of them on 12<sup>th</sup> March 2013. The citation was issued by the court on 25<sup>th</sup> September 2013. It was served on the said Michael Nthenge Wambua, and he entered appearance on 9<sup>th</sup> October 2013.
  7. The citee, Michael Nthenge Wambua, also swore an affidavit on 31<sup>st</sup> October 2013, filed in court on 1<sup>st</sup> November 2013. He denies receiving the letters that allegedly forwarded the consent forms to him although he does not deny that the address used was his. He states that the family held several meetings in the period between August 2012 and August 2013 but none of the petitioners ever mentioned to him that there were forms that he was required to sign. He states that although he had raised the issue of petitioning for grant of letters in those meetings, the other members of the family apparently wanted the matter to pend for a while. He was interested in being an administrator and had even obtained the relevant documents such as the letter from the chief of the area from which the deceased hailed and the deceased's death certificate. He discloses that the six (6) survivors of the deceased are children of two mothers, four (4) from one mother and two (2) from the other. Two of the petitioners are from the mother with four survivors, while one is from the mother with two survivors. The citee comes from the mother of the two survivors. He also raises several other issues which are not altogether pertinent to the matter before me.
  8. The law on citations is in Part VI of the Probate and Administration Rules. There are three types of citations – to accept or refuse a grant, to take probate and to proposed a will. In intestacy, a person entitled to administration may be cited by the court to accept or refuse a grant of letters of administration intestate. The person respond should reset to the citation by either renouncing his entitlement to apply for the grant or by applying for the grant. If he fails to appear upon being cited or to apply for grant, the citor may proceed to petition for the grant.
  9. In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.
  10. The scenario in this case is that the citation has issued at the instance of persons who have already petitioned for the grant. Such a citation serves no purpose. It will be noted that the Deputy Registrar did not direct the petitioners to cause citation to issue upon the citee. She only asked them to avail evidence that such citation had been served before they filed their petition. No such citation had issued and they ought to have told the DeputyR so instead of causing the court to issue the citation.
  11. As the citation in this case was issued unprocedurally, I find no basis upon which I can proceed to give directions on the same. I shall disregard it, and direct the Deputy Registrar to cause the petition to be gazetted. The citee shall be at liberty, after gazette, if so minded, to file objections.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF July 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Ms. Jinn advocate for the respondents.**