



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO.514 OF 2012

IN THE MATTER OF THE ESTATE OF:

NORAH GESARE OKONGO..... DECEASED

AND

WILFRIDA MORAA GESARE

CHARLES KINANGA OMBOGO..... CITORS

VERSUS

INNOCENT OMBUTORA OKONGO

ABEL OCHORA OKONGO..... CITORS

RULING

1. The citors herein Wilfrida Moraa Bosire and Charles Kinanga Ombogo filed a chamber summons under **Rules 22 (7) (a)** and **Section 47** of the **Law of Succession Act Cap 160 Laws of Kenya** seeking orders:-
 1. *That this honourable court be pleased to allow the citor/applicant to file petition/succession cause to the estate of the late Norah Gesare Okongo on behalf of the citees who have refused to file the same.*
 2. *That costs be in the cause.*
2. The application was supported by the 1st citor's affidavit herein Wilfrida Moraa Bosire in which she stated that she was the wife to the late Ezekiel Bosire Mayieko who died on 9th May 2007, she has obtained letters of administration *Ad Litem* for the purpose of suing and that her late husband had purchased all that parcel of land known as No.1894 Bogusero Adjudication Section at Kshs.12,000/= from the late Norah Gesare Peter also known as Norah Gesare Okongo.
3. Furthermore, that there was a suit filed by the late Norah Gesare Okongo against her late husband which suit was dismissed on 30th September 1998, she has talked to the citees herein to file succession cause for the purpose of giving her her portion of land but they have refused to do so, hence this citation seeking assistance from court.
4. The deponent further avers that though the citees have filed a memorandum of appearance they have not filed any papers to indicate whether they are willing or not willing to file the succession cause; that (30) days have lapsed since the entry of appearance and she is now requesting this honourable court to allow her file the succession papers because the citees have refused to file for the same as provided for under **Rule 22 (7) (a)** of the **Probate and Administration Rules Cap 160**.

5. When the matter came before me on 8th March 2013, the citors were both present in person but the citees were absent although there was evidence they had been served. The citors were given leave to petition for Grant of Letters of Administration Intestate to the deceased's estate Norah Gesare Okongo, and were supposed to file for the grant within the 30 days from that date. The matter was then set for mention on 12th April 2013 to confirm compliance.
6. On 12th April 2013 the citors explained that they had not been able to apply for grant because they did not have the court order. I made an order that the citors were to extract the court order made on 8th March 2013 for purposes of obtaining the chief's letter to enable them file for grant.
7. On 24th January 2014 the 1st citor herein Wilfrida Moraa Bosire informed the court that they still had not managed to file for succession since the chief had declined to issue them with the requisite letter.
8. In **Re Estate Nyaga Mbungu (Deceased) [2001] e KLR** Emukule J discussed the function of a chief in succession proceedings and stated that:-

“For avoidance of doubt as his statutory role, Section 46 of the Law of Succession Act, Cap 160 Laws of Kenya gives an Administrative officer a chief and the Assistant Chief specific roles to protect the free property of a deceased person, wherever a report is made to him by any person who appears to have a legitimate interest in the estate of the deceased. A report having been made to him by a person who appeared to him to have a legitimate interest in the estate of the deceased Nyaga Mbungu, the chief had a statutory duty to notify either the Public Trustee (Under section 46 (4) of the Act) or as in this case, inform the Executive Officer of the court of impending application for succession.”

I agree with the above statement.

9. In the instant case the citors clearly have a legitimate interest in the estate of Norah Gesare Okongo and since the real beneficiaries to the deceased's estate are reluctant to petition for grant, the chief in his administrative role (See **Re Estate Nyaga** (Supra) has a duty to inform the court how many beneficiaries should inherit from deceased's estate, and of the impending application for succession.

10. By a copy of this ruling, the chief of the area where the deceased, Norah Gesare Okongo hailed from is ordered to issue a letter to the citors in accordance with **Section 46 (4)** of the **Law of Succession Act**. The chief has 30 days from the date of this order to issue the letter failing which he shall be cited for contempt of court orders. This ruling shall be served upon the chief within 7 days from today.

Dated and delivered at Kisii this 29th day of August, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Both present in person for the Citors

Both absent for the Citees

Mr. Bibu - Court Assistant