



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**SUCCESSION CAUSE 465 OF 2011**

**IN THE MATTER OF THE ESTATE OF ANNAH SIRO ..... DECEASED**

**AND**

**DANIEL MORONGE MABIRIA ..... APPLICANT**

**-VERSUS-**

**CHARLES MAKORI SIRO ..... RESPONDENT**

**RULING**

The applicant, **Daniel Moronge Mabira** has taken out citation proceedings against the respondent **Charles Makori Siro**. He seeks to be allowed to file and obtain grant of Letters of Administration in respect of the estate of **Annah Bwari Siro** (deceased). The applicant hereinafter citor is the step brother of the deceased while the respondent hereinafter citee is the eldest son of the deceased. The citor has averred in his supporting affidavit that the citee being first in priority with respect to the deceased's estate has neglected to take out Letters of Administration.

In his replying affidavit, the citee confirms that he is the son of the deceased who by law ranks first in priority in succeeding his deceased mother's estate. He however avers that the deceased had by the time of her death disposed of land parcel **No. West Kitutu/Bomatara/ 2784** to one **Stephen Nyamoti Thomas** who subsequently sold a portion thereof to one **Charles Nyakundi**.

The application came before me for hearing on 14<sup>th</sup> February, 2012. Parties consented to canvass the application by way of written submissions within a period of 30 days. The respondent filed his submissions on 16<sup>th</sup> May, 2012 while the applicant failed to file his.

I have considered the application on the basis of the affidavits on record and the submissions of the respondent. It is clear from the citee's replying affidavit and submission that he is not interested at all in taking out Letters of Administration on his deceased mother's estate. He has submitted that the deceased had no property in her name at the time of her death. In essence, he has not seen any value in undertaking succession proceedings. That being the case, I see no reason why the citor who is interested in pursuing succession proceedings and has satisfied the court that he is a beneficiary to the estate of the deceased should not be allowed to apply for letters of administration. It is not for this court to decide through this application whether or not the deceased had any property to pass on at the time of her death.

Accordingly I allow the application dated 23<sup>rd</sup> May, 2011 with no order as to costs.

**Ruling dated, signed and delivered at Kisii this 21<sup>st</sup> day of September, 2012.**

**R. LAGAT-KORIR**  
**JUDGE**

**In the presence of:**

..... for applicant

..... for respondent

..... court clerk

**R. LAGAT-KORIR**  
**JUDGE**