



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
MISC. APPL. NO.181 OF 2005

IN THE MATTER OF THE ESTATE OF:

DORCAS KHEVALIDECEASED

AND

**IN THE MATTER OF A CITATION TO ACCEPT OR REFUSE LETTERS OF
ADMINISTRATION INTESTATE**

BETWEEN

PETER JUMA MATEREAPPLICANT/CITOR

AND

ISAAC SHIUNDU WAFULA.....CITED PERSON/RESPONDENT

RULING

This is a ruling on a citation to accept or refuse letters of administration intestate brought by Peter Juma Matere against the citee Isaac Shiundu Wafula. The citor states that the citee is the heir apparent in the estate of Dorcas Khevali and has failed to take out letters of administration in respect of the deceased's estate. The citor prays that he be appointed the administrator of the estate should the citee fail to institute the succession proceedings.

The facts leading to this citation are contained in the affidavit of the citor sworn on 18/7/2005. It is deponed that the father of the citor was allocated land parcel no.Bungoma/Kamukuywa/202. He took possession of the land immediately. The citor and his siblings have lived on the land with their father who died sometime back. The citee is the son of the late Dorcas Khevali who obtained the title to the land in question L.R. No.Bungoma/Kamukuywa/202 when the citor's family were still occupying the land with their father as the allottee. The father of the citor sued the mother of the citee in Bungoma HCCC NO.99 of 1998. Before the suit was determined both parties passed away. The citor now wants to proceed with the suit his father filed but cannot do so for want of a part to substitute for defendant. For this reason he prays that the court compels the citee to apply for the letters of administration in his mother's estate.

The citee was served but failed to enter appearance and file reply to this citation. The citation is basically unopposed. The facts set out in the affidavit are clear. The citee has been approached to file the succession cause on behalf of him and other beneficiaries in the estate of their late mother but he has refused to do so. He chose not to defend this citation for reasons well known to him. I find the facts outlined in the affidavit sufficient to support the prayers in this citation. There is urgent need to activate the High Court suit to determine ownership of the land. The parties are no more and their heirs apparent must move to have the suit heard and determined. It is a suit which was filed about twelve years ago. The citor and his siblings reside on the land whose ownership is disputed. The citee cannot be allowed to hold the citor and other beneficiaries at ransom. The parties must move and pursue the remedy their parents sought in law.

I therefore grant the orders sought in the following terms:

- a) That the citee moves to court files and serves an application for limited grant to pursue HCCC NO.99 of 1998 by stepping in the place of his deceased mother Dorcas Khaveli within 30 days;**
- b) In the alternative, the citee files a succession cause in a competent court for distribution of estate of Dorcas Khaveli within 30 days;**
- c) That in default of compliance the citor will be at liberty to take the mantle and institute proceedings in terms of (a) or (b) or both for the benefit of the beneficiaries of his deceased father and that of the late Dorcas Khaveli.**
- d) That the costs of this citation be paid by the citee.**

I hereby so declare and decree.

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F. N. MUCHEMI
JUDGE

Ruling dated and delivered on the 7th day of November 2011 in the presence of Citor.

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JUDGE