



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CITATION CAUSE NO. 61 OF 2010**

**IN THE MATTER OF THE ESTATE OF BARASA MUKHUMBO – DECEASED**  
**A N D**  
**NASHON W. NERIMA ..... CITOR**  
**V E R S U S**  
**STEPHEN JUMA MAKHUMBO ..... CITEE**

**R U L I N G**

1. The Citor herein, Nashon W. Nerima by his citation dated 29.1.2010 claims that the citee, Stephen Juma Makhumbo has refused to take out a grant of letters of administration to his brother's estate and yet he, the citor, has an interest in it. That the deceased, Barasa Makhumbo had five (5) acres of land to be excised from L.R. no. Bunyala/Namirama/356 and agreed to transfer the same to one Joash Erima Ochwanga but died before effectively transferring the said parcel of land. That, he, the Citor, has the lawful right to the land and it should be transferred to him.
2. In a Replying Affidavit sworn on 8.3.2010, the Citee's answer to the Citation is that he was aware that the Citor's father paid the Citee's brother KShs.38,000/= on 14.10.1990 but the latter breached the agreement for sale when he failed to pay the entire purchase price. Further, that the whole transaction did not involve the Land Control Board for consent to transfer and in any event, the Citor was not his father's personal or legal representative and he cannot pursue any claim on behalf of the estate. That the Citation should therefore be struck off with costs to him.
3. As I understand the concept of a Citation, it is addressed to a particular person to provide a reason why a particular step should not be taken. In the instant case, the Citation is one to accept or refuse a grant. In Law of Succession by W. M. Musyoka, Law Africa, 2006, it is stated that such a Citation is made by a person with an inferior right to take out a grant and is addressed to a person with a superior right and who has refused or declined to take out a grant but at the same time fails to renounce his or her right to a grant.
4. The Citor has made out a case that the Citee has refused to take out a grant in respect of his brother's estate but it seems to me that the reasons given by the Citor and the response by the Citee would place both parties in an awkward position. The Citor's claim is to a parcel of land allegedly purchased by his father from the Citee's brother. Sadly, he has failed to show that he is entitled to pursue any claim on his father's estate and he ought to regularize that position first. It is not enough that his father has died and therefore he can in a very "kienyeji" way purport to represent that estate in separate succession proceedings. I therefore agree with the Citee that the Citor must sort out that issue before attempting to pursue any claim on behalf of his father's estate.
5. Having regularized his position as above, the Citor may revive the present proceedings but in the meantime the Citation herein lacks legal competence and is struck off.
6. Each party will bear its own costs.
7. Orders accordingly.

***Delivered, dated and signed at Kakamega this 18<sup>th</sup> day of November, 2010***

**ISAAC LENAOLA**  
**J U D G E**