



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Succession Cause 129 of 2008

IN THE MATTER OF THE ESTATE OF AGNES MORURI OSINDI (DECEASED)

AND

IN THE MATTER OF CITATION FOR APPLICATION OF STANLEY OSINDI NYAMATO,

CHARLES OSINDI, FRED KEMOSI OSINDI AND GEOFFREY NYAUMA OSINDI

TO ACCEPT/OR OBJECT TO THE LETTTERS OF ISSUED TO NELSON ONGERA MIGIRO

RULING

I: Citation

1. A question arose as to “*whether the High Court of Kenya apart from the Principal Registry or and the Mombasa Registry, has jurisdiction to entertain applications for citation?*”
2. This court received various arguments put forward by advocates who had filed citation proceedings at the registry, High Court of Kenya at Kericho. These arguments were that:
 - i) *By virtue of **Section 60** of the Constitution of Kenya the High Court has unlimited original jurisdiction in Civil and Criminal matters.*
 - ii) *The Law of Succession Act is Subordinate to the Constitution.*
 - iii) *No circular has been issued by the Hon. the Chief Justice to removed the jurisdiction of the High Court on citation.*
 - iv) *The High Court stations have grown and extended.*
 - v) *Access to justice is required. The intention and spirit of the law is to be looked into.*
 - vi) *Injustice to travel to Mombasa and Nairobi.*
 - vii) *There is only one High court, others are branches of the principal registry and Mombasa registry*
 - viii) *The rules did not intend citation be dealt only by the principal registry and the Mombasa registry”*
3. These arguments apart from one, never referred this court back to the rules and act in question.
4. It is the courts intention to briefly outline the procedure as to citation in order to fully understand the interpretation of the law.

II: Procedure

5. Where a person entitled to take up grant of probate of an estate with will, or with letters of administration with will annexed (Form 31) or letters of administration intestate (Form 32), to propound a document as a will (Form 33), to an executor to whom power is reserve, (Form 34), to an executor who has inter meddled with estate (Form 35), and or by creditor where deceased had no known relatives (Form 36) ; where such person fails to take such letters, the citor (i.e. *“the person seeking the issue of a citation...”*) may draw up the citation application giving 15 days to such person so refusing to take up the grants to do so, failure to, then the citor would apply to take up the grant. This application would be annexed with affidavit as per form No. 20 to 24 respectively.
6. Once served, the person cited would either accept or refuse to take up the grant of probate.
7. If such a person accepts to take up the grant and having been duly served with a citation, then such person is required to file and enter appearance in the principal registry or in the Mombasa registry. They would do this by filing an entry of appearance to citation (Form 27) (r 21 (5)). The form that is filed at the principal registry or Mombasa registry would then be sealed with the seal of that registry. (*The time period of 15 days may be extended by the registrar to enter appearance*).
8. This form requires to be filed in copies. Once sealed it is then required to be served upon the citor with the copies. The person cited has 30 days in which to apply and take up the said grant of probate.
9. Where the person cited fails to enter appearance after being duly served with the citation, or does not or enters appearance and does not take up the grant within 30 days of service(r 22(5) the citor may apply for a grant to himself.

III: Interpretation

10. Citations are filed at the registry (rule 21(1), Under the probate and administration rules (LN 104/1980) rule 2, on the interpretation *“registry”* means a probate registry of the High court or of the Resident Magistrate’s Court and includes the principal registry.
11. This therefore means that citation may be filed at any High Court Probate registry and where there is no High court at the Resident Magistrates court and or this includes the principal registry.
12. A person cited though must first enter appearance at the principal registry or at the Mombasa registry by filing Form 27. This form is then sealed with a seal of the registry and is used by the person so entering appearance to Petition for the said grant of probate. Such a person would file an affidavit annexing the sealed Form 27 copy of the affidavit to prove that they have entered appearance.
13. The process of the probate would continue in the normal course.
14. For clarification if the question is whether the High Court of Kenya and the Resident Magistrate’s Court where a High Court of Kenya does not exist have jurisdiction to entertain citation application the answer is yes, they do.
15. The principal registry and or the Mombasa registry are two forcal points where entry of appearance are made and documents sealed.
16. This procedure is important to give legal authority to the person cited of his intention to proceed with the probate. It is no difference with seeking Form 30 from the principal registry that no other grant has been made to the estate of the deceased.

DATED this 28th day of May, 2009 at **KERICHO**

M.A. ANG’AWA

JUDGE

Advocates

N.O. Migiro advocate instructed by the firm of M/S Migiro & Co. advocates for the citor – present

J.M. Motanya advocate instructed by the firm of M/S Motanya & Co. advocates for the citor

Present in citation No. (28/06)

N/A for M/S Nyaingiri & Co. advocates for the citee.

Advocates present during submission in court on 12th May, 2009 but absent during the ruling;

T.M.O Nyaingiri advocates for the firm of M/S Nyaingiri & Co. advocates

- Citation No. 129/08.

A.C. Bett advocates from the firm of M/S Bett & Co. advocates

– Citation No. 71/08

No. 70/08

No. 188/07

No. 9/06

C.K. Korir advocate from the firm of M/S C.K. Korir & Co. advocates

– Citation No. 85/07

K.L. Kipyegon advocate from the firm of M/S K.L. Kipyegon & Co. Advocates – Citation No. 385/07

No. 128/07

J.K. Kirui advocate from the firm of M/S J.K. Kirui & Co. advocates

- Citation No. 297/07

No. 362/07

No. 378/07

A.N. advocate from the firm of M/S Matwere & Co. advocates

– Citation No. 9/06