



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Citation Cause 173 of 2007

1. Family Law
2. The law of Succession Act Cap.160 Laws of Kenya.
 - I. Citation Proceedings
 - i) Applicant purchased a parcel of land for Ksh.158, 000/= from the citee.
 - ii) Land is registered in the name of the deceaseds', father to the citee.
 - iii) The applicant sues the citee for the refund of the sum of moneys (PMCC.364/02).
 - iv) Attempts to auction citee premises fruitless.
 - v) Citee refused to take out grant of letters intestate.
 - vi) Next of kin to deceased served with citation papers.
 - vii) Fails to enter appearance at the Nairobi/Mombasa Principal Registry.
 - ix) Application to take up letters himself.
 2. Application for citation
 - i) That the citation be made to the applicant.
3. Held.
 - i) When a purchaser/creditor is an interested party, application must name persons letters is to be taken out or name administrator general.
 - ii) In this case grant be made to administrator general to take up grant on refusal of next of kin.
4. Case Law
5. Advocate

**IN THE MATTER OF THE LATE
JEREMIAH KIPROTICH BII (DECEASED)
AND
JOSEPH KIBORE LANGAT - RESPONDENT**

RULING

Citation Proceedings

I. Procedure

1. The parties herein are Joseph Kibore Langat a male adult who purchased land from one Isaack Kipkurui Rotich, a male adult being land sold to him at a sum of Ksh.158,000/=. On 7th July 2000 Isaack Kipkurui failed to hand over the title deed but instead is alleged to have taken a loan from the Agricultural Finance Corporation (AFC) Kitale Branch.
2. On 30th May 2002 Joseph Kibore Langat sued Isaack Kipkurui Rotich in the Principal Magistrate's Court at Kericho No.364/02. Isaack Kipkurui Rotich failed to enter appearance nor filed defence. As the sum claimed was monetary, Joseph Kibore Langat went for execution. He drew a decree totaling Ksh.313, 022.08, was issued with a certificate of costs and proceeded to attach the properties through M/S Jogi Auctioneers (*being tables, chairs, cupboard, cow, old wheelbarrow etc*). The sale only realized Ksh.11,630/=. He had Isaack Kipkurui arrested and held at the Kipkelion Police Station, then to civil jail. No decretal amount was paid by March 2004.

3. Isaack Kipkurui Rotich engaged the services of Wheldon Ngetich & Co. Advocates and stated his health was poor but wished to pay the debt in installments. On 8th June 2004 the judgment debtor was released by R. Ngetich (Mrs) – SRM. Nothing further occurred on this file.
4. In the civil suit PMCC No.364/02 the sale agreement for purchase of land, had no land reference disclosed.
5. On 11th June 2007 the said Joseph Kibore Langat filed citation proceedings against the estate of Jeremiah Kiprotich Bii. It is in this application, filed as Succession Cause No.173/07 that Joseph Kibore Langat disclosed that one Isaack Kipkurui Rotich, whom he sued in PMCC No.364/02 case for refund of purchase price on a sale agreement, was actually the son of the late Jeremiah Kiprotich Bii. It was land parcel **L.R. Kericho/Kipkelion/Chesinende Block 10 (Momoniat)/257** that he had purchased from Isaack Kipkurui Rotich a portion amounting to 1.6 acres. It was part of the agreement that the title be deposited with the chief to process the ownership. He failed to do so and therefore the reasons why the civil suit was instituted for the recovery of the moneys.
6. Isaack Kipkurui Rotich has now failed to take letters for the estate of his late father. The applicant Joseph Kibore Langat served the application twice. The second time he served personally upon Isaack Kipkurui Rotich on 5th October 2009 to accept the citation and enter appearance within 15 days. No appearance had been entered.
7. It is then that Joseph Kibore Langat asked that he take up the grant of letters against the estate of the late Jeremiah Kiprotich Bii (*deceased*) the registered owner of land he alleged to have bought from Isaack Kipkurui Rotich son of the deceased in order that he may take 1.6 acres sold to him.

II. Opinion.

8. Various issues arose from this application. The first being that a PMCC Suit No.364/02 was filed for recovery of a debt owed to the applicant Joseph Kibore Langat by the citee Isaack Kipkurui Rotich. An advocate represented Isaack Kipkurui Rotich and the debt inclusive of interest of Ksh.313,000/= or thereabout was agreed to be paid in installments. The matter ended there.
9. By applying for citation proceedings for the deceased's estate of Jeremiah Kiprotich Bii, it transpired and was disclosed that the sale agreement between the applicant Isaack Kipkurui Rotich the citee Isaack Kipkurui Rotich was actually the land belonging to the deceased and not Isaack Kipkurui Rotich. The original sale agreement was null and void as the citee Isaack Kipkurui Rotich held no letters of grant intestate to deal with the said property. It was not his to sale without orders of the court in a Probate and administration matter. The sale would probably be null and void. The only option would be for the recovery of the moneys paid which is the issue in PMCC No.364/02 case.
10. Nonetheless the applicant is a creditor and wants his moneys. He cannot base the citation on grounds land was sold to him, but on the issue that he is owed moneys, which has not been established. The issue of double enrichment arises.
11. The other issue that arose is as the citor he is an interested party. He cannot apply to have letters of grant be issued to him when he requires to sue another. The correct procedure is to name a person whom the letters is to be issued to, on refusal of the citee. In the case of **Estate of V. Nyamodi (deceased) Nairobi** a similar application was made and the citor failed to name persons other than those entitled to who could be named to take up the estate. The application was refused by court.

12. Where there is no one known to be named then the estate could be taken over by the Administrator General who in all sense is the Public Trustee. The applicant is required to name a person other than himself as entitled to take up the grant or name the administrator general in order that he may file suit against the estate. The possibility, in the long run, of the matter being *Res Judicata* in PMCC No.364/02 may arise.

13. The application of 23rd October 2009 is declined partially with leave to file an appropriate application.

14. A copy of this ruling be served upon the intended citee and his advocate in PMCC NO.364/02.

15. Costs in the cause.

Dated this 8th day of December of 2009 at Kericho

M. ANG'AWA

JUDGE