

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

IN THE MATTER OF THE ESTATE OF MAGDELENE MAJUMA TULIENGE (DECEASED)

DINAH NASIKE TULIENGE:.....CITOR

VERSUS

ANTHONY BARASA TULIENGE:.....RESPONDENT

RULING

By an affidavit in verification of proposed citation to accept or refuse letters of administration intestate dated 12th May, 2009, Dinah Nasike Tulienge deponed that she, together with Magdelene Majuma Tulienge are joint administrators of the estate of Johnson Tulienge Walela who died on 6th August 1996. That both of them are wives to the late Johnson Tulienge Walela.

That during the pendency of application for confirmation of grant vide Kitale HC P & A NO.78/1997, Magdelene Majuma Tulienge passed on in the year 2006. She left behind children the eldest of whom is Ralsa Tulienge who has failed to take out letters of administration of the estate of his late mother.

That it is necessary for the said Anthony Barasa Tulienge to take out letters of administration. This is by reason of the fact that she is aggrieved in that the share of the estate she was given during the confirmation of grant in respect of the estate of Johnson Tulienge Walela was sold by the late Magdelene Majuma Tulienge and the subject property charged to the bank before her demise.

By reason of the foregoing, she sought orders of setting aside the confirmation so that distribution of the estate could be done afresh.

The said affidavit in verification of proposed citation to accept or refuse letters of administration intestate to the estate of the late Magdelene Majuma Tulienge was served upon Anthony Barasa Tulienge. He was required within 15 days after service to cause an appearance to be entered in the High Court Registry Kitale and to indicate his acceptance or refusal to take out letters of administration of the estate of Magdelene Majuma Tulienge. It was intimated to him that in default of so appearing and accepting letters of administration as aforesaid, the court would proceed to grant letters of administration of the estate to Kennedy Simiyu Tulienge. It suffices to say that he defaulted.

A citation may issue upon an executor, or a person who is entitled to apply for grant in intestacy, who has intermeddled in the estate of the deceased to show cause why he should not take a grant. It can be used to compel such an executor **de son tort** or person intermeddling in the estate to take a grant. The citation issues at the instance of any person interested in the estate, and it should be brought after three (3) months from the date of the death of the deceased. (See Rule 22(3) of the Probate and Administration Rules).

In respect of this case Anthony Barasa Tulienge defaulted in entering appearance. In the premises the court is at liberty to grant letters of administration to the estate of the late Magdelene Majuma Tulienge to Kennedy Simiyu Tulienge. Being of that persuasion, the court do hereby grant the letters of administration of the estate of Magdelene Majuma Tulienge to Kennedy Simiyu Tulienge.

Having done that it is upon the applicant herein now to set in motion the process of setting aside the confirmation so that the distribution of the estate of the late Johnson Tulienge Walela could be done afresh.

Dated and delivered at Kitale this 1st day of December, 2009.

N.R.O. OMIBJA
JUDGE

Mr. Kiarie for Muniolo for Applicant.