

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Succession Cause 524 of 2006

IN THE MATTER OF THE ESTATE OF ABEL MWALE WABWALABA

AND

STANLEY CUTA OKONYOLO.....CITOR

**(CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE
UNDER RULES 21 AND 22**

OF THE PROBATE AND ADMINISTRATION RULES)

RULING

This is a ruling in respect of the Preliminary Objection dated 9th October 2006 raised by the citees against the citation by Stanley Outa Okonyolo. The Preliminary Objection seeks an order that the citation be struck out on the grounds:

- 1. that the citor lacks any legal capacity or locus standi to cite or proceed with the citation, and***
- 2. that the citation is incompetent and an abuse of the process of the court.***

In his affidavit sworn on 30th March 2006, the citor averred that his deceased father, Saulo Okonyolo Okutoyi, was the proprietor of the parcel of land title No. MARAMA/LUNZA/2016 which was transferred to and registered in the name of the deceased, Abel Mwale Wabwalaba, through fraud on the part of both Grace Nechesa Anyangu and the deceased, Abel Mwale Wabwalaba. The abstract of title to the said land which was annexed to the affidavit of the citor shows that the said parcel of land is a subdivision of land parcel No. Marama/Lunza/1021 which was originally registered in the name of Saulo Okonyolo Okutoyi who transferred it on 17/12/87 to Grace Nechesa Anyangu for a consideration of Shs.9,000/= and the latter in turn transferred it on 30/10/03 to Abel Mwale Wabwalaba for a consideration of Shs.200,000/=. The affidavit of the citor does not show that he is the personal representative of the estate of his father nor does it disclose under what circumstances he transferred the said land No. Marama/Lunza/2016 to Grace Nechesa Anyangu who in turn transferred it to Abel Mwale Wabwalaba. Money consideration is however shown for the said transfers. The citation does not exhibit the citor's interest in the said land and in any case, without letters of administration, the citor has no capacity to act for the estate of his late father who, because he did not die owning the said land, the citor cannot project himself as an heir thereof.

Mrs. Lusinde, learned Counsel for the citor, contended that the citor was provoking the citee to apply for Letters of Administration Intestate. She contended that the citor is desirous of suing the citee for the recovery of the land once the latter takes out the Letters. But even if the citees took out the letters, the citor will also need to have Letters for his father's estate.

I think Mr. Musiega, learned counsel for the cite, was right in his contention that the citor has not clothed himself with legal capacity to take out the citation.

It is my finding that the citor had no capacity to take out the citation and I hereby strike it out with no order as to costs.

Dated at Kakamega this 27th day of September, 2007.

G. B. M. KARIUKI

J U D G E