



IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2167 OF 2002

IN THE MATTER OF THE ESTATE OF MOSES WAMAKIMA

KINYANJUI alias WAMAKIMA KINYANJUI (Deceased)

DAMARIS GATHONI WAMAKIMA CITOR/PETITIONER

VERSUS

SAMUEL KINYANJUI WAMAKIMA 1st CITEE

DAVID NJUGUNA WAMAKIMA 2nd CITEE

HENRY NGUGI WAMAKIMA 3rd CITEE

PETER CHEGE WAMAKIMA 4th CITEE

CHARLES IKUMI WAMAKIMA 5th CITEE

ELIUD NDUNGU WAMAKIMA 6th CITEE

JOHN KAMAU WAMAKIMA 7th CITEE

R U L I N G

From what the parties are telling me, they are not proceeding with these proceedings properly because the purpose of a citation is to make the persons cited file a petition for a grant within 30 days.

It is after that person has failed to file such a petition that the citor proceeds to file his or her petition for a grant.

That did not happen in these proceedings where the citor served the citees with the citation several days after the citation and a petition for a grant of letters of administration had been filed in this court on 23-8-2002. At the time the citees were being served with the citation, they were not served with the petition for a grant yet it had been filed.

It means the citees did not, after service upon them, have the time to file their petition for a grant before the citor filed her petition.

Since that is the position, I hold the view that these proceedings are irregular right from the start.

I note that after service was effected upon them, three of the citees have come to the court and filed their summons dated 20-9-2002 seeking restraining orders against one of the beneficiaries. That beneficiary is not the petitioner or the citor.

That was done after all the citees had entered appearance on 5-9-2002 also filed an affidavit they clam to be under subwww. rule 4 of Rule 22 of the Probate and Administration Rules although they had not been served with the citor's petition for a grant nor a notice to file such a petition.

Further more, I note that on 3-10-2002 an order was made by this court to publish the cistor's petition in the Official Gazette.

I said above that the proceedings were irregular right from the start. Subsequent actions taken by the parties are mere actions to further the irregularity and not to put the irregularities right

. In the circumstances it is my considered and humble view that these proceedings should not be allowed to continue having been tainted with irregularities. Where citations have to be made, the rules applying to citations must be adhered to to give meaning to the citation.

It follows therefore that these proceedings, starting with the filing of the petition and citation by the Petitioner/Citor on 23-8-2002 and ending with the documents filed on 6-11-2002, be and are hereby struck out as being irregular and therefore incompetent.

As both sides were closing their eyes to the irregularities and therefore proceeding further, each party to bear its own costs of the proceedings so far to this date.

The parties at liberty to institute fresh proceedings and in accordance with the right procedure correctly applying the applicable law.

Dated this 6th day of November 2002.

J.M. KHAMONI

JUDGE