



In re Estate of Abuya Daudi Tamaro (Deceased) (Succession Cause E001 of 2024) [2024] KEHC 9512 (KLR) (10 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E001 OF 2024**

TA ODERA, J

JULY 10, 2024

IN THE MATTER OF THE ESTATE OF ABUYA DAUDI TAMARO (DECEASED)

AND

**IN THE MATTER OF CITATION TO ACCEPT OR REFUSE LETTERS
OF ADMINISTRATION INTESTATE UNDER RULE 21 OF THE
PROBATE ADMINISTRATION RULES CAP 160 LAWS OF KENYA**

AND

**IN THE MATTER OF A CITATION BY, ANGELA KERUBO
ABUYA, LYDIA GOKO ABUYA AND EVELYN BITENGO ABUYA**

BETWEEN

**ANGELA KERUBO ABUYA 1ST CITOR
LYDIA GOK ABUYA 2ND CITOR
EVELYN BITENGO ABUYA 3RD CITOR**

AND

**MOGENDI ABUYA TAMARO 1ST CITEE
JACINTA MORAA ABUYA 2ND CITEE**

RULING

1. Angela Kerubo Abuya, Lydia Abuya and Evelyn Bitengo Abuya the Citors herein jointly filed the Citation through affidavit dated 26.1.24 against Mogendi Abuya Tamaro and Jacinta Moraa Abuya the citees herein. The 1st citee filed a replying affidavit dated 1.7.24 on his own behalf and on behalf of the 2nd cite opposing the said citation. The parties herein are blood siblings being the children of Abuya Daudi Tamaro (deceased) and Mama Selina Bonareri Abuya. Both sides admit that their mother ranks



in priority in the administration of the estate of the deceased being his widow. I have no doubt at this stage that deceased was in a monogamous marriage. It emerged from parties herein that their mother is ailing and thus may not be able to effectively administer the estate. The citors accused the 1st citee and his wife of not taking good care of their mother. The citees on their part have an issue with the 1st citor whom they accused of high handedness as she proposed to file a succession cause and be appointed administrator without involving the 1st citee which their mother also did not agree with. Also that she lives in USA as a such may not be able to effectively administer the estate. The citors deponed that despite several requests to the citees to sign the consent to making a grant (form 38), the citees have refused and or neglected to do so. Further that there is need to file the succession cause to foot the medical bills of their mother who is suffering from acute dementia and heart failure as per medical reports AKA -003 -AKA 006. The citees proposed that the 1st and 2nd citees who are of equal or lesser priority with their other siblings be allowed to file the succession cause as it has become difficult to obtain the consent of the citees to consent to the making of the grant. I however in their submissions the citors propose that the 3 of them be allowed to apply for letters of administration intestate under rule 22 (7) of the [probate and administration Rules](#) and that in the alternative Jacqueline Kemunto Kiage, Angela Kerubo Abuya , Mogendi Abuya Tamaro and Lydia Abuya be allowed to file petition of administration. in their submissions the citees argued that since the 1st citee is the only son to the deceased he and their 1st born sister ought to be allowed to take out letters of administration.

2. I have carefully considered the citation the reply and the able submissions by both counsel. Rule 22(1) of the [Probate and Administration Rules](#) provides that that:

“A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.”

3. Section 47 of the [Law of Succession Act](#) provides :

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”

4. Rule 73 of the [Probate and Administration Rules](#), provides that:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

Rules 26 and 27 of the [probate and Administration Rules](#) provides:

“

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.



(3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

27. Exceptions to rules as to priority.

Nothing in rule 26 shall operate to prevent a grant being made to any person to whom a grant may be made, or may be required to be made, under the Act.

5. On whether the 1st citee is entitled to be included as a petitioner as he ranks higher since he is a son to the deceased, this was his argument. However, Article 27 of the Constitution of Kenya guarantees equality before the law to wit;

“Equality and freedom from discrimination.

27.

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guarantee.”

6. Section 29 of the law of succession act defines who dependants of deceased are and it does not discriminate against male and female children on the ground of sex. I find that the parties herein being children of the deceased rank equally on the issue of administration of the estate of their father.

7. It has emerged that the parties herein have an extraneous dispute not related to the estate herein save for Jacqueline the 1st born of the family who has remained neutral and is preferred by both sides to be one of the administrators. This court must remain focused on the intended succession cause.

8. In the case of John Osicho v Hana Omolo Osewe & Another [2013] eKLR

“A Citation is a document issued by the Probate Registry, whereby the person being the claimant (Citor) calls upon the person cited (Citee) to provide a reason why a particular step should not be taken; ... Citations occur in both contentious and non-contentious probate.



In non-contentious Probate, they serve the purpose of bullying along or fast tracking the issue of a grant of letters of administration.”

9. Also in *Josiah Muli Wambua* [2014] eKLR, Hon. Musyoka, J. explained that:

“In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”

10. It is clear from the facts of this case that the personal differences among the parties have slowed down the process of taking out of letters of administration of the estate of the deceased herein. They were all aware that the letters of administration should be taken out to administer the estate of their father. The succession cause has thus not been filed and as such this citation is properly before this court to determine who should take out letters of administration. I do not find any plausible reasons to disqualify any of the children of deceased herein from moving the court to file the intended succession cause save that Rule 7(8) the *Probate and Administration Rules* provides for a maximum of 4 administrators.

11. I proceed to invoke the provisions of Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules* and appoint the following persons to jointly take out letters of administration to the estate of deceased in the interest of justice;

1. Jacqueline Kemunto Kiage
2. Mogendi Abuya Tamaro
3. Angela Kerubo Abuya
4. Jacinta Moraa Abuya

The succession cause be filed within 30 days from today.

Each party to bear his own costs since this is a family matter.

T.A ODERA

JUDGE

10.7.24

Delivered virtually via teams platform in the presence of:-

Mwangi Ndegwa for Citors

Nyangito for 1st and 2nd Citees

1st Citee & 1st Citor present. The 2nd and 3rd citors are absent. 2nd citee and Jacqueline Kemunto absent.

Oigo: Court Assistant

