



**In re Estate of Wakaba Kamau alias John Wakabu Kamau alias Wakabu Kamau (Deceased)  
(Succession Cause E219 of 2024) [2024] KEHC 12425 (KLR) (Family) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12425 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE E219 OF 2024**

**H NAMISI, J**

**OCTOBER 17, 2024**

**IN THE MATTER OF WAKABA KAMAU ALIAS JOHN WAKABU KAMAU ALIAS  
WAKABU KAMAU (DECEASED)**

**AND**

**IN THE MATTER OF A CITATION TO ACCEPT OR REFUSE LETTERS OF  
ADMINISTRATION INTESTATE**

**BETWEEN**

**HANNAH NDUTA WARUI ..... 1<sup>ST</sup> CITOR**

**VIRGINIAH WAMBUI MUCHENE ..... 2<sup>ND</sup> CITOR**

**AND**

**MARY WANENGI WAKABU ..... 1<sup>ST</sup> CITEE**

**SUSAN NJERI MUNGAI ..... 2<sup>ND</sup> CITEE**

**THOMAS KAMUYU ..... 3<sup>RD</sup> CITEE**

**JAMES THU WAKAVU ..... 4<sup>TH</sup> CITEE**

**ELIZABETH WAMBUI WAKAVU ..... 5<sup>TH</sup> CITEE**

**DAVID MUKANDA WAKAVU ..... 6<sup>TH</sup> CITEE**

**RULING**

1. By Citation dated 14 March 2024, the Citors cited Mary Wanengi Wakbu, Susan Njeri Mungai, Thomas Makuyu, James Thuo Wakavu, Elizabeth Wambui Wakavu And David Mukanda Wakavu to



show cause why they should not petition for a grant of representation in respect of the estate of their late father, Wakaba Kamau. The Deceased died intestate on 18 August 1981, leaving behind the Citors and Citees as his survivors.

2. The Citors notified the Citees of their intention to petition for the same Grant as persons entitled to a share of the estate of the Deceased. Service was effected by counsel for the Citors as well as through the court. However, there was no response, hence the hearing of this Citation ex parte.
3. At the hearing the 1st Citor, Hannah Nduta Warui, stated that there had been a lot of push and pull amongst the siblings over the estate and succession proceedings. The Citors had sought assistance from the area Chief, who summoned the Citees on three occasions. The Citees failed to heed the Summons.
4. The 2nd Citor, Virginia Wambui Muchene, stated that they had even sought assistance from their maternal uncle. All efforts to get the Citees to agree on succession proceedings proved futile, thus necessitating this course of action.
5. There is no dispute that the Citees as persons entitled in priority to petition for a grant of representation in respect of their late father's estate have not filed any objection to the citation. Under section 66 of the [Law of Succession Act](#), as a general principle, where a person dies intestate, the court has final discretion on who to take a grant of letters of administration. The provision states as follows:

“66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
  - (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
  - (c) the Public Trustee; and
  - (d) creditors: Provided that, where there is partial intestacy, letters of administration in respect.”
6. According to that provision, the Court should be guided by Part V of the Act, which sets out the order of priority in entitlement to a share in the estate of the deceased. The same applies with regard to entitlement to administration by dint of section 66. The surviving spouse has priority to administration, followed by the children, parents of the deceased, siblings, other relatives to the sixth degree, the Public Trustee and creditors in that order. In the instant case, it would follow that all the children of the Deceased, have priority to appointment, the Citors included.
  7. The Citees, having failed and/or neglected to commence the succession proceedings, the Court is mandated to step in and appoint the Administrator to unlock the process. Therefore, I make the following orders:
    - i. The Citors, Hannah Nduta Warui And Virginia Wambu Muchene, will lodge a Succession Cause within 30 days from the date herein;



- ii. The same cause will be mentioned before the Deputy Registrar a week after the 30 days' lapse, on 26 November 2024

**DATED AND DELIVERED AT NAIROBI THIS 17 DAY OF OCTOBER 2024**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Ms. Muchira.....for the Citors

