



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**SUCCESSION CAUSE NO. 2 OF 2017**

**RUKIA ABDALLAH.....CITOR/APPLICANT**

**VERSUS**

**1. ZUHURA JUMA KAMINZA**

**2. REHEMA JUMA KAMINZA**

**3. HALIMA JUMA KAMINZA**

**4. MUSA JUMA KAMINZA.....CITEES**

**R U L I N G**

1. The question before this court is whether the citor, (**RUKIA ABDALLAH**) can cite **ZUHURA JUMA KAMINZA, REHEMA JUMA KAMINZA, HALIMA JUMA KAMINZA** and **MUSA JUMA KAMINZA** (all citees) on behalf of the late Mariam Kavele Kaminza the deceased administratrix of the estate of late **JUMA KAMINZA KILUMBI** to which the estate in this cause relates to.

2. The Citees have been cited by virtue of being the beneficiaries and surviving children of the deceased in this cause and the late Mariam Kavele Kaminza the appointed administratrix to the estate of **JUMA KAMINZA KILUMBI** (deceased) who died on **16<sup>th</sup> January, 1994**.

3. A brief summary of the history of this cause shows that **MARIAM KAELE KAMINZA** petitioned for letters of administration intestate in respect to the estate of her late said husband and was appointed the administratrix of the estate via **Kitui Principal Magistrate's Court Succession Cause No. 19 of 2008** on 24<sup>th</sup> February, 2009 and on 29<sup>th</sup> March, 2010 the grant was confirmed where the following beneficiaries were given the following respective share of the estate;-

1. Mariam Kaele Kaminza..Kyangwithya/Kaveta/303 – 0.28 ha

2. Zuhura Juma Kaminza ...’’ - 0.19 ha

3. Jafari Juma Kaminza .....’’ -0.20 ha

4. Rehema Juma Kaminza.....’’0.19 ha

5. Halima Juma Kaminza.....0.20 ha

6. Musa Juma Kaminza.....0.18 ha

7. Mahmoud Abdalla Mohamed.....0.06 ha

4. On **16<sup>th</sup> May, 2012** vide Summons for Revocation of grant dated **10<sup>th</sup> May, 2012**, the Applicant, now the citor in this matter applied for revocation of grant citing inter alia that she was left out in the administration of the estate yet she was lawfully married to one **ABDALLAH JUMA KAMINZA** (a deceased son to **JUMA KAMINZA KILUMBI-deceased**).

The other reason given is that the grant was obtained without her consent and that the Lower Court lacked monetary jurisdiction to deal with the cause.

5. The record of proceedings shows that the Respondent to the summons for revocation of grant, **MariaM Kaela Kaminza** passed on, on **4<sup>th</sup>**

**June, 2015** before the determination of the Summons for Revocation of Grant, forcing the applicant to bring citation proceedings dated **22<sup>nd</sup> March, 2017**.

6. The citation has been strenuously opposed by the Citees and they have stated in the grounds of opposition dated **7<sup>th</sup> May, 2018**, that the deceased has no estate capable of being succeeded and that issuance of any orders will be an exercise in futility.

7. The Citees have further relied on the affidavit of **REHEMA JUMA KAMINZA** sworn on **25<sup>th</sup> January, 2021**. In their joint opposition to the citation, she avers that, that prior to demise of the administratrix (Mariam Kaele Kaminza) had fully administered the estate and transferred the respective shares to the respective beneficiaries. She further claims that some beneficiaries have sold their shares to 3<sup>rd</sup> parties.

8. The other ground cited in opposition is that the Citor though had been married to their late brother **ABDALLAH JUMA**, the two had divorced under Islamic Law prior to the death of the said Abdallah Juma. She claims that under Islamic Law, the Citor cannot claim anything in inheritance upon her divorce. She disowns her and claims that she is not a beneficiary.

9. The Citees through their learned counsel, Mr. Mwalimu have further submitted that the administratrix, prior to her demise sold her share of the estate and that what the Citees are holding are their lawful respective shares. They point out that 3 persons who are not family members are holding their respective shares that were sold to them. They have expressed unwillingness to act on behalf of their late mother, arguing that they are not responsible for her actions.

10. The Citor on the other hand has asserted that the grant was obtained through non-disclosure and misrepresentation. She accuses the Citees of sidelining her despite being a wife to the son of the deceased in this cause. She insists that the summons for revocation of grant should proceed and the Citees are proper persons to answer questions posed in the said summons on behalf of the administratrix.

11. This court has considered this matter and the citation made.

It is undisputed fact that this citation in substance, relates to the estate of the Late Juma Kaminza Kilumbi (deceased) whose estate was administered by the appointed administratrix, the late Marian Kaele Kaminza (deceased). The Citor has raised issues in the manner in which the administratrix administered the estate and has questioned her decision to exclude her in the administration of the said estate. The Citees have submitted that the Citor has no right to question how the estate of the late Juma Kaminza Kilumbi was administered mainly on 2 grounds namely;-

- i. That she had been divorced by the late son of the deceased in this cause. That deceased son was known as Abdallah Juma Kaminza.
- ii. That the appointed administratrix, the late Mariam Kaele Kaminza had finished or finalized the administration and had given or transferred the respective shares to the respective beneficiaries and therefore in their view, there was nothing left.

12. This court is however not persuaded by the above averments by the citees for the following reasons which I consider basic;

- i. The **Law of Succession Act (Cap 160)** and in particular Section 3 defines “wife” to include a wife or spouse is separated from her husband/or wife. Besides this provision, **Section 29** of the same Act define a dependant to include a wife or former wife/wives. In light of the above, the argument by the Citees that the Citor cannot claim to be a dependant or beneficiary because she had been divorced cannot hold any water.
- ii. Secondly, under **Section 76 of Law of Succession Act of Kenya**, revocation or annulment grant is not limited by time and what an applicant or any person interested in the estate is required to show or demonstrate that any of the grounds listed under **Section 76 of Law of Succession Act** exist and the court will revoke or annul a grant whether the grant is confirmed or not. A Respondent or anyone claiming under him cannot defeat revocation merely by the fact that the administration of the estate is finalized or that the distribution has taken place.

13. I have perused through the rules on citations generally which are domiciled under **Rule 21 and 22 Probate and Administration Rules** and while it may be true that the said rules do not specifically address the issue at hand in this matter, they provide procedural aspects of the application.

14. The **Law of Succession Act** however is comprehensive and has in my view sufficient provisions to address most not all succession disputes. **Section 47 of the Act in particular and Rule 73 of Probate and Administration Rules** gives this court jurisdiction and the mandate to entertain any dispute under the Act and make such orders that are expedient and necessary to meet the ends of justice.

15. This court is further guided by the provisions of **Section 54 of Law of Succession Act** which gives this court power to make or limit a grant according to the circumstances of each case. It is my understanding that while a party can benefit from a grant or an asset from the estate of a deceased person, he cannot on the other hand avoid liabilities. It follows therefore that the Citees cannot on one hand claim benefits accrued to them on account of actions or omission of an administratrix and at the same time claim that they cannot be called to account for the omissions.

In my considered view, allowing them to do so is tantamount to allowing them to defeat the determination of the pending summons for revocation of grant. This court is further guided by **Article 48 of the Constitution** which provides that access of justice should not be impeded. In my view, unless this application is allowed and the Citees are cited, the Applicants pursuit of justice will be impeded which I find undesirable.

16. This court has not found that there is merit in the summons for revocation of grant dated **10<sup>th</sup> May, 2012**. That is far from the case here. The named Citees are children of the late Mariam Kaele Kaminza and indeed beneficiaries of the estate of the late Juma Kaminza Kilumbi. They cannot hide from the fact they benefited from the administration of his estate. They are the only persons who should be called to answer or account for the actions of the deceased administratrix.

The reasons for their unwillingness is of course not difficult to fathom but having said that, this court finds merit in the citation dated this **22<sup>nd</sup> March, 2017**.

In the premises, the named Citees **Zuhra Juma Kaminza, REHEMA JUMA KAMINZA, Halima Juma Kaminza** and **MUSA Juma Kaminza** are hereby appointed the administratrix and administrator respectively of the estate of the late Mariam Kaele Kaminza.

The four Citees are hereby made the respondents in the summons for revocation of grant dated **10<sup>th</sup> May, 2012** and are given **14 days** from the date of this ruling to respond to the said pending application. For now, I shall make no order as to costs.

**Dated, Signed and Delivered at Kitui this 3<sup>rd</sup> day of March, 2021.**

**HON. JUSTICE R. LIMO**

**JUDGE**