



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CITATION CAUSE NO. E018 OF 2020

IN THE MATTER OF THE LATE TIMOTHY KILONZO KIVUMBU

DAVIS C KIMENZU MULI.....CITOR/APPLICANT

VERSUS

BEATRICE KALUME

FLORENCE KITONYO.....CITEE/RESPONDENTS

RULING

1. Vide an Originating Summons dated 3rd February 2012, the applicant sought to be issued with a grant of letters of administration in accordance with the prayer contained in the citation application dated 26th November, 2020 in which he cited one Beatrice Kalume and Florence Kitonyo being wives (widows) to the late Timothy Kilonzo Kivumbu who died on 23rd November, 2018 to show cause why they could not take a grant of letters of administration being the persons entitled in priority to do so.
2. The citor who claims beneficial interest in LR.No Kilifi/Kadzonzo/Madzimbani/1165 being part of the estate of the deceased intimated of his intention in taking out a grant of letters of administration in their place should they fail to do so.
3. The application is supported by averments contained in the verifying affidavits sworn on 5th February, 2021 and 20th November, by the citor stating that he and the deceased were the joint owners of the said land and that prior to the deceased's death, they had obtained a title deed in their joint names.
4. He averred that, on 5th May, 2020 he and the deceased got into a sale agreement in which he could purchase the deceased's share out of the said land at kshs 2,300,000. That he paid the deceased instalments totaling to Ksh 1,687,700 as at 28th September, 2013 thus leaving a balance of Ksh 613,000. He attached various acknowledgements of receipt of the purchase price as annexure Dw4 and 5 .
5. He claimed that, the deceased having died before completing their sale transaction, the widows should take up the responsibility in completing the transaction by taking letters of administration.
6. Despite service of the citation, the citees did not respond nor file any petition for a grant of representation. When the matter came up for hearing, the citees were not present. A return of service was filed as proof of the said service hence the matter proceeded exparte.
7. I have considered the application herein which is not opposed. The purpose of citation proceedings in an intestate estate is intended at compelling persons entitled in priority to petition for a grant of representation but are reluctant or refused to do so upon being cited. See **Josiah Muli Wambua (deceased) Nairobi Succession Cause No 2557/2012 (2014) eKLR** where the court stated that;

“In intestate, citation issues 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 the grant after the citee fails to apply”
8. In a similar situation in the case of **In Re estate of Kiprono Sitenei (deceased) 2018) eKLR** the court allowed a creditor (purchaser of deceased's land) to petition for a grant of representation after the citees failed to do so.
9. Under Section 66 of the Law of Succession Act, a grant of letters of administration can issue in order of priority a follows;

(a) surviving spouse or spouses, with or without association of other beneficiaries

(b) other beneficiaries entitled with priory according to their respective beneficial interests as provided by part V

(c) Public trustee, and

(d) creditors

10. The widows of the deceased having been served with the citation being beneficiaries entitled in priority to the creditors, and further having refused and or neglected to realize their entitlement in order of preference, the estate cannot remain unadministered forever. The creditor has a right under Section 66 of the Law of Succession to petition for a grant of representation where those entitled in priority are reluctant or unwilling to do so.

11. However, the court cannot act on the Originating Summons dated 3rd February, 2021 to automatically issue a grant of letters of administration to the citor. The citor if allowed to petition must follow due process by petitioning the court in similar manner as if it was the citees petitioning.

12. Accordingly, it is my finding that the citation herein which is not opposed is merited and the same is allowed with orders that;

(a) The citor is hereby allowed to petition for a full grant of letters of administration in respect of the estate of the deceased.

(b) Costs in the cause

Dated, signed and delivered virtually this 18th day of May, 2021

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J. N. ONYIEGO

JUDGE