



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. E006 OF 2020**

**IN THE MATTER OF THE LATE MWONGERA MUGAMBI RINGURI.....DECEASED**

**AND**

**IN THE MATTER OF CITATION**

**BETWEEN**

**MISHECK MAINGI MUTHURI**

**CYPRIAN IBURI NGARURA**

**LAWRENCE KARIINYA IBUURI.....CITORS**

**AND**

**TABITHA ITWARUCHIU**

**NKIROTE MUGAMBI**

**TONY MUGAMBI.....CITEES**

**RULING**

1. What is before the court for determination is the summons dated 2/3/2021 and seeking in the main that the citees having been served with the citation on the 4/2/2021 but had since then declined to enter appearance as commanded therein hence the citors have exercised their rights under the rules by bringing this application seeking, as persons entitled to apply for the grant, to be permitted to so apply.
2. The application is supported by the affidavit of the 1<sup>st</sup> applicant which reiterates the grounds on the face of the application then exhibited documents to show that the deceased sold to the applicant some three acres of land, that the sale was acknowledged in a succession cause NO. 213/1997 and therefore they desire that the estate be administered so that they pursue their claim against the estate but the persons entitled in priority to apply for grant are foot-dragging or just unwilling.
3. Despite service of the application, no responses were filed nor was an appearance made on the hearing date and, as a consequence, the matter proceeded ex-parte and stands to be decided on the basis of the material availed by the applicants only.
4. The claim by the applicants is apparent to be grounding the citation is on the premise that they are creditors. By virtue of section 66, in cases of intestacy, a creditor is entitled, in a lower priority, to apply and be granted letters of administration.
5. However, the creditor stands in a lower priority to the spouse, beneficiaries and the public trustee. It is in appreciation of that ranking of priorities that the three applicants here have directed their citation at the three citees as the spouse and two children, of the deceased, calling upon them to apply for the grant.
6. In the citation filed in court on the 23/12/2020, and shown by the affidavit of service sworn by Maitethia M'Rukunga on the 9/01/2021, to have been served on the citees, the citees were commanded to enter appearance thereto within 15 days. They have not. Having not so answered to the command, the law deems that the citors apply to court for orders that they be permitted to apply for the grant themselves.

7. Here I am satisfied that the citors, being creditors, served the citees who failed to enter appearance and therefore a pedestal has been created for the grant of orders that the citors may themselves apply for Grant of Letters of Administration Intestate to the estate of the deceased, MWONGERA MUGAMBI RINTURI.

8. I grant the permission sought and direct that the citors shall lodge the petition at the Registry in Meru, within 60 days from today. Once the cause is lodged, let this file be closed.

**DATED SIGNED AND DELIVERED IN OPEN COURT THIS 09<sup>TH</sup> JULY 2021.**

**Patrick J.O Otieno**

**Judge**

**In presence of**

MR. Otieno Obwanda for the Citor

No appearance for the citees.

**Patrick J.O Otieno**

**Judge**