



IN THE HIGH COURT OF KENYA

AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 186 OF 2011

IN THE ESTATE OF:

DAVID OTWANE IMAET.....DECEASED

BETWEEN

STEPHEN OKITWI OKODOI.....CITOR/RESPONDENT

AND

ELIZABETH IGULE IMAET.....CITEE/APPLICANT

RULING

1. **Elizabeth Igule Imaet**, the citee/applicant herein filed an application dated 24th April 2019 under Order 51 Rule 11(2) of Civil Procedure Rules & 63 of the Probate and Administration Rules. She is seeking the following orders:

a) That the taxation of the citor/respondent's bill of costs be stayed pending the hearing and determination of the objection proceedings in Busia High Court Succession Cause No. 342 of 2012.

b) That costs of this application be provided for.

2. The application is premised on the following grounds:

a) That the citee's earlier application seeking to set aside the *ex-parte* citation proceedings was dismissed with costs on 25th February 2019 with no specific order that the said costs would be taxed and paid forthwith.

b) That the ruling granted the costs to the citor acknowledged the existence of objection proceedings in Busia High Court Succession Cause 342 of 2012 and suggested that any pending dispute between the parties could be decided in the said succession cause in which there are substantive objection proceedings that are yet to be heard and decided.

c) That the bill of costs as filed is premature owing to the ruling and the unresolved proceedings.

3. The application was opposed by the citor on the following grounds:

a) That the application lacks merit.

b) That it is intended to deny the citor his costs.

4. I have perused the submissions by counsel for the parties. In my ruling of 25th February 2019 at paragraph five I explained what I understand the purpose of citation proceedings as follows:

The purpose of a citation is to notify a person who is entitled to a grant but has failed to file a succession cause to do so. Failure, the person citing him may do so. Once this purpose for the miscellaneous file has been achieved, the file is closed. This means the moment the judge issued orders to the citor, this file's purpose was fulfilled. Any issues that may arise in respect of the estate of the deceased, must be addressed in the succession cause that has been filed. In the instant case, the applicant is aware of High Court Succession Cause 342 of 2012. She has filed an application therein. It is therefore mischievous to attempt to open this miscellaneous file.

5. I did not make this file an appendage of High Court Succession Cause 342 of 2012. The gist of my ruling was that it had achieved its purpose. That is why I ordered the file closed. The present application is therefore not only mischievous, but an abuse of the court process.

6. The application is dismissed with costs.

DELIVERED and SIGNED at BUSIA this 8th day of April, 2020

KIARIE WAWERU KIARIE

JUDGE