



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
MISC. APPLICATION NO. 3 OF 2020
IN THE MATTER OF THE ESTATE OF AGNES CHERUTO MISSIONG (DECEASED)
AND ADMINISTRATION RULES
IN THE MATTER CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE
RULES 21 AND 22 OF THE PROBATE AND ADMINISTRATION RULES

ROBERT JUMA MASINDE.....1ST CITOR

JAMIN MARUTI.....2ND CITOR

VERSUS

CHARLES KIPSANG BUSIENEI.....1ST CITEE

MICHAEL KIPKORIR BETT.....2ND CITEE

RULING

The case for the Citors

1. Pursuant to the provisions of Rules 21 and 22 of the Probate and Administration Rules, the Citors through their Counsel Ms Beatrice Munialo took out a citation dated 31/08/2020. The citation required the Citees to enter appearance, and accept or refuse letters of administration in respect of the estate of the deceased. In the alternative, the Citors were required to show cause why letters of administration should not be granted to the Citors.
2. The citation is based on the 11 paragraphs supporting affidavit of Robert Juma Masinde who deposed on his behalf and on behalf of the second Citor.
3. It was his deposition that on 6/5/2007, he bought two points of an acre from the deceased, in respect of which they executed an agreement, being annex marked "RJM1" herein.
4. The Agnes Cheruto Missiong, the deceased died on 24/7/2007. The deceased died intestate and her beneficiaries have started disturbing the first Citor. The deponent has made several attempts to have family members of the deceased take out letters of administration, without success, hence this citation.
5. It is imperative that Charles Kipsang Busienei and Michael Kipkorir Bett, who are beneficiaries and the eldest sons of the deceased, should take out letters of administration, to enable the deponent enforce his rights.

The case for the citees

6. Charles Kipsang Busienei, the first Citee, has deposed to a 12 paragraphs replying affidavit, in which he has admitted that the first Citor, bought 0.2 of an acre of land from their deceased mother.
7. He has further averred that their deceased mother was the registered owner of land parcel No. Waitaluk/Kapkoi Block 6/Kimoson/193,

which was measuring about 2.9 acres.

8. He also has averred that one Emily Jerono and Jamin Maruti are strangers to him and none of them bought land from their deceased mother. He has further deposed that his mother died before she transferred the portion of the said land to the first Citor and to one Margaret Masulia Robert.

9. The first Citee has deposed that he is willing to take out letters of administration intestate and transfer by transmission the 0.2 of an acre to the said Robert Juma Masinde and to Margaret Masulia Robert.

Issues for determination

10. I have considered the affidavits of both parties and the applicable

law. As a result, I find that the following are the issues for determination.

1. Whether the Citors' have made out a case for the grant of the orders sought.
2. Who bears the costs of this application?

Issue 1

11. I find that both Citees were served with the instant citation. This

is clear from the affidavit of service dated 8th September 2020. In view of this, I find that the instant proceedings properly proceeded *ex parte*.

12. I further find that none of the Citees has accepted to take out letters of administration intestate in respect of the subject estate.

13. In the premises, I find that the first Citor has made out a case for the grant of the orders sought.

Issue 2.

14. This is a succession cause in which the Citees did not participate in the main hearing of the cause and for that reason, I make no order as to costs.

15. I therefore allow the application with no order as to costs.

Ruling signed, dated and delivered at Kitale this 1st day of December, 2020 in the presence of Ms Munialo for the Citors and in the absence of the Citees.

J. M. BWONWONG'A.

J U D G E

1/12/2020