



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

**MISCELLANEOUS SUCCESSION APPLICATION NO. 137 OF 2018**

**IN THE ESTATE OF:**

**EGESA ADEMBA ADUNDO.....DECEASED**

**BETWEEN**

**JOHNSON WABWIRE OGOLA.....CITOR**

**AND**

**VINCENT LUMUMBA EGESA.....CITEE**

**RULING**

1. Johnson Wabwire Ogola filed a citation in respect of Vincent Lumumba Egesa, the cite herein for orders that:

- a) That the citee be compelled to file a succession cause in respect the estate of **EGESA ADEMBA ADUNDO**, his father;
- b) In the alternative, he (citor) be allowed to do so if the citees does not comply to do so within a specified period.

2. The application is premised on the following grounds:

- a) That the citee is the son of the said **EGESA ADEMBA ADUNDO** deceased, and therefore is entitled to file a succession cause in respect of his deceased father's estate.
- b) That the citor has a claim against the estate of **EGESA ADEMBA ADUNDO** on behalf of his father's estate.
- c) That the citor cannot be able to pursue the claim unless a legal representative of the estate of **EGESA ADEMBA ADUNDO** has been appointed.

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

- a) That the applicant has no legal or equitable interest in the estate of the deceased.
- b) That the application is seeking to resurrect Busia SRM C.C No.32 of 1986.

4. I have perused the affidavits by both parties and it is clear that there were unresolved issues before the father of the citor and the father of the citee passed on. These unresolved issues can only be addressed if the estate of each deceased has a legal representative. The issue of merits or lack of the same can only be argued at the appropriate time and forum.

5. The application has merits. I direct that the citee files a succession cause within 30 days in respect of the estate **EGESA ADEMBA ADUNDO** and if he fails to comply, the citor will be at liberty to do so.

6. Each party shall bear own costs.

**DELIVERED and SIGNED at BUSIA this 21<sup>st</sup> day of May, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**