



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

MISC SUCCESSION CAUSE NO. 138 OF 2015

IN THE MATTER OF THE ESTATE OF JUMA YUSSUF (DECEASED)

FATUMA GATITU MUHAMAUDDO.....1ST PETITIONER

ZUBEIR ABDALLA.....2ND PETITIONER

Versus

HAWA KAINDA.....1ST RESPONDENT

YUSUF JUMA.....2ND RESPONDENT

RUKIA JUMA.....3RD RESPONDENT

HUSSEIN JUMA.....4TH RESPONDENT

RULING

1. The significant order sought in the application dated 5th October 2018 is inhibitory Orders to be registered on the estate property herein namely **Ntima/Igoki/610**. The Respondents raised a preliminary objection and also filed Replying affidavit sworn by **Yusuf Juma** and both dated 16th October 2018. The point of objection is that the issues raised by the applicant are *Res Judicata* since the subject matter and issues thereto are the same as in **Isiolo Kadhi Court Succession cause No. 8 of 2015** and **H.c. Meru Civil Appeal No. 48 of 2017**.

2. On 20th February 2019 the Court directed the parties to file their respective submission on the Application and the Preliminary Objection. Both Parties have filed their submissions which I have duly Considered

Analysis and Determination

3. It is important detail that this proceeding is a citation to accept or refuse letters of administration intestate. These, therefore, are not substantive proceedings or petition for letters of administration. Perusal of rule 22 and in particular 22(5), 22(6) and 22(7) of the Probate and Administration Rules, reveals that a substantive petition should be filed by the person cited or citor depending on the status of the citation after service. See relevant parts of rule 22 below:-

(5) If the time limited for appearance has expired and the person cited has not entered an appearance in either the principal registry or the Mombasa registry, the citor may-

(a) in the case of a citation under sub-rule (1), petition the court (if he has not already done so) for a grant to himself;

(b) in the case of a citation under sub-rule (2), apply to the court by summons for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under sub-rule (3), apply to the court by summons on notice to the person cited for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the application.

(6) An application under sub-rule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not within 30 days after his appearance applied for a grant under sub-rule (4), or has failed to prosecute his application with reasonable diligence, the citor may

(a) in the case of a citation under sub-rule (1), petition the court for a grant to himself;

(b) in the case of a citation under sub-rule (2), apply by summons to the court for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5);

(c) in the case of a citation under sub-rule (3), apply by summons to the court for an order requiring the person cited to take a grant within a specified time or petition the court for a grant to himself or to some other person specified in the petition, and the application shall in each case be served on the person cited.

4. It seems that citation has not been heard. The record also show that the application dated 15th February 2017 was granted. The petitioner later filed application dated 5th October 2018 for injunction. I have considered the arguments of parties on that application. But I note with concern that the Respondent made very attractive arguments especially that the citation is already spent and the property which is subject of the citation was also directly in issue in Isiolo Kadhi Court Petition number 8 of 2015 which was determined and the said estate property was distributed to the rightful beneficiaries. They also argued that an appeal thereto was dismissed for want of prosecution; and attempt to reinstate the appeal was also declined by the court. On the other hand, the petitioner in the citation stated that she was not a party in Isiolo case. These arguments present some dilemma; but the court is experienced in resolving such difficult matters. Notably, far-reaching order of inhibition of the estate property has been issued by the court. The order was issued without the participation of all the parties. Information coming through was also not availed to the court in issuing those orders. Now therefore, it is only prudent that I do not decide on the application for injunction in such intermediate proceeding. Instead, I should determine the citation. Accordingly, I order the head of station Isiolo to cause the original filed in the case of Isiolo Kadhi Petition No. 8 of 2015 to be submitted to this court in 7 days of today. I will thereafter consider the citation and give my ruling on 5th June 2019.

5. For now, that is enough and I will not discuss the other issues raised by parties to avoid prejudice. It is so ordered.

Dated, signed and delivered in open court this 8th day of May 2019

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F. GIKONYO

JUDGE

In presence of

1st Petitioner – present

2nd petitioner – present

2nd respondent – present

All legal counsels absent except Ngugi for petitioner

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F. GIKONYO

JUDGE