



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. SUCCESSION CAUSE NO. 201 OF 2013

In the matter of the Estate of BERNRD KARIUKI NJOGU (Deceased)

THOMAS KITHINJI MBOGO.....PETITIONER/CITOR

V E R S U S

MERCY WANJA NYAGA.....OBJECTOR/CITEE

R U L I N G

1. The citor in his citation dated 30/04/2013 brings his application in his capacity as a purchaser of land in the estate of the deceased Rowland Bernard Kariuki Njogu. He has named the widow of the deceased Mercy Wanja Nyaga as the citee.
2. The citation was opposed in the replying affidavit. The citee states that she is not aware that the deceased sold land to the citor during his lifetime. The home of the citee and her family land is on L.R. Ngandori/Kiriari/3744 which he claims to have bought.
3. The citee further states that the citor is not entitled to apply for letters of administration intestate considering that he is a stranger to the estate of the deceased.
4. By consent, the citation was argued by way of written submissions. Regrettably, only citor's advocate filed his submissions through his counsel Messrs Momanyi Gichuki & Co.
5. It is argued that the citor though just an interested party in the estate of the deceased, should be allowed to petition for letters of administration in the estate because the citee who is the widow is not interested in filing a succession cause.
6. The only issue arising in this application is whether the citor should be allowed to apply for letters of administration intestate in the deceased's estate in order to pursue his interest in LR. Ngandori/Kiriari/3744.
7. This citation is brought under Rule 22(1) of the Probate and Administration Rules. The rule provides:-

A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
8. The citee entered appearance herein through an advocate and indicated that the citor has no right to apply for the letters of administration intestate. She relied on her relationship to the deceased for she is the widow.
9. Section 66 of the Act places the surviving spouse in preference of all others in administration of the estate.
10. The citee therefore ranks in priority to her children and to the citor who is only an interested party. This citation was filed on 26/06/2013. The citee entered appearance on 3/07/2013. However, she is yet to apply for the letters of administration intestate although she has shown interest by replying and opposing the citation.
11. The citor has been in court for over 3 years now awaiting disposal of this citation.
12. In his pleadings the citor appreciates that the citee ranks in preference to him and that is the reason for citing her. The interests of a party who comes to court to seek a remedy must be adjudicated upon. The rights of the opposite party must be accorded protection as provided by the law.

13. Having taken into consideration all the above factors, I hereby make the following orders:-

(i) That the citee should apply for letters of administration intestate for the estate of the deceased within 60 days in default of which the citor will be at liberty to do so.

(ii) That each party to meet its own costs of this citation.

14. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF JUNE, 2018.

F. MUCHEMI

J U D G E