



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. SUCCESSION CAUSE NO. 184 OF 2016

In the matter of the Estate of MBURIA KUGEREKA (Deceased)

NJERU NJAU Alias KAMANGA.....APPLICANT/CITOR

V E R S U S

ALBINA MUTHONI KANG'ETHE.....RESPONDENT/CITEE

R U L I N G

1. This is a ruling on a citation to accept or refuse letters of administration intestate in respect of the estate of Mburia Kugereka.
2. The citor in his citation dated 24/10/2016 cites the widow of the deceased on Albina Muthoni Mburia who is said to be one of the persons entitled to share the estate.
3. The citee was served with the citation but did not file a reply. She has severally been served personally with hearing dates of the citation but has never attended court.
4. The applicant describes himself as a creditor under Section 66(1) of the Law of Succession Act and is keen to follow up his interest in the estate.
5. The applicant states that he was the plaintiff in a suit where the deceased was the defendant. An appeal was filed in the Court of Appeal and cannot be heard unless an administrator of the estate of the deceased is joined.
6. For this reason, he has filed this application to have the widow of the deceased be appointed administrator and subsequently be joined in the appeal.
7. The law applicable herein is Sections 79 and 66 of the Law of Succession Act. Rule 22(1) of Probate and Administration Rules under which this application is brought.
8. Section 79 of the Act provides: -

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

9. Section 66 of the Act provides: -

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference

- a) surviving spouse or spouses, with or without association of other beneficiaries;*
- b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*
- c) the Public Trustee; and*

d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

10. Rule 22(1)

(1) 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.

11. The reading of Section 66 allows creditors to be appointed as administrator of deceased's estate where the first in priority are not willing to take up the responsibility or where they are not available.

12. It is my considered opinion that there being no objection to this citation, the citor ought to be allowed to take out the letters of administration to defend his interest.

13. I find the application merited and allow it as prayed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF NOVEMBER, 2018.

F. MUCHEMI

J U D G E

In the presence of: -

Mr. Ngige for Muthoni for Applicant