

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

IN THE MATTER OF THE ESTATE OF THE LATE DAN MALENYA AMUTABI - DECEASED

CITATION NO.31 OF 2016

JAMIN MULAMA MURUNGA..... CITOR

VERSUS

HILDA INDOSHI AMUTABI1ST CITEE

ODRINE KHAOMBI2ND CITEE

RULING

1. The citor herein has cited Hilda Indoshi Amutabi and Odrine Khaombi, being the sister and wife of the late Dan Malenya Amutabi (the deceased), requiring them to cause an appearance to be entered and accept or refuse letters of administration of the estate which by law devolves to and vests in the personal representative of the deceased or show cause why the same should not be granted to the citor herein.

The citees were served with the citation but they did not respond. An affidavit of service was filed with the court to prove service.

2. The grounds in support of the citation are that the citor is a dependant of the estate of the late Dan Malenya and is one of the persons entitled to share in his estate comprising of Land Parcel No.Kakamega/Shiswa/75. That when the deceased died there was a civil case No.97 of 2016 pending between him and the citor over the above said parcel of land. That the citees have refused/declined to take letters of administration of the estate of the late Dan Malenya so that the pending Civil Case can proceed. The citor is seeking that the citees do show cause why they have not taken out letters of administration on the estate of Dan Malenya or why the same should not be issued out to him (citor).

3. Though the rule under which the citation is made is not stated, the citation has been made under the provisions of *Rule 22* of the Probate and Administration Rules. Rule 22(5) reads as follows:-

“If the time limited for appearance has expired and the person cited has not entered 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 the grant to himself.

(b)

(c)

4. The citees were served with the citation and have not entered appearance. In face of failure by the citees to enter appearance in the matter, the citor is hereby given leave to petition the court for grant of letters of administration in respect to the estate of the deceased herein.

Delivered, dated and signed at Kakamega this 5th day of April, 2017.

J. NJAGI

JUDGE