



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 603 OF 2015

IN THE MATTER OF THE ESTATE OF J K M (DECEASED)

CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION

RULING OF THE COURT

1. The Citor herein **C K M** has filed a citation dated 9th October, 2015 seeking for an order directing the citee **A K K** to proceed and file a Petition for letters of administration intestate in respect of the estate of the late **J K M** who died on the 30th June, 2015. The said Application was duly received in court and the requisite notice issued to the citee. The Citee thereafter duly entered an appearance through her learned counsels M/s Munyasya and Co Advocates. During the hearing of the citation both the Citee and her counsels were absent. The Citee also did not file any reply to the citation.

An earlier Application dated 21/03/2016 by the Citor in which she had sought for maintenance for her school going children and herself was withdrawn by the Citor on the 16/05/2016.

2. The Citor filed an Affidavit in support of the citation in which she deponed the following issues:-

- (a) That the deceased herein J K M had taken in the Citor as his second wife and both lived as husband and wife for a period of 15 years from the year 2000.*
- (b) That Citor and deceased were blessed with three (3) children namely:- C N K, L N K and J N K whose birth certificates were annexed to the Affidavit.*
- (c) That the Citor's union with the deceased was well known by the Citee who was the deceased's first wife and that all the Citees children knew her very well.*
- (d) That upon the demise of the deceased, the Citee in collaboration with some of her relatives evicted the Citor and her children from the Citor's matrimonial home and then cut her off from any access to funds from the estate.*
- (e) That the Citor had assisted the deceased in his livestock farming business.*
- (f) That all funds from the estate are currently handled by the Citee and her children.*
- (g) That the Citor has requested the Citee to take out letters of administration jointly with her as co-administrators but same has been neglected and or ignored by the citee.*
- (h) That the Citors children are suffering since the Citee is not in a hurry to take up letters of administration unless compelled to do so by the court.*

(i) That the Citee and her children are not likely to give the Citor consent to take up the letters of administration.

(j) That the Citor's children are still minors attending school and that the funds for school fees and upkeep have to be obtained from the estate.

(k) That the citee should come out and indicate whether she accepts or refuses to take up letters of administration and also show cause why the Citor should not be allowed to take up the said letters.

3. Submissions:

Miss Mutuku for the Citor made oral submissions on the 21/03/2017. She submitted that the citation herein be allowed since the Citees have taken too long to act. She submitted that the Citee herein be ordered to take up letters of Administration for the estate since she has not lodged any Petition to date.

4. Determination

I have considered the Citor's Application as well as the oral submissions by her learned counsel. Indeed a citation may be lodged by a Citor pursuant to the Provisions of Rule 22 of the Probate and Administration Rules. The Citor has presented sufficient information to clothe her with the requisite locus as she has shown that she is a person who would herself be entitled to a grant in the event the person cited renounces his or her right. The Citor has deponed that she is a second wife to the deceased herein J K M with whom they cohabited for 15 years until his demise and were blessed with three (3) children whose names as seen in the copies of birth certificates all bear that of the deceased. The Citor has also deponed that the Citee is the deceased's first wife and who together with her children have refused to take up letters of administration. The deceased herein died in June, 2015. The Citee entered appearance on 12/11/2015 upon being served with the requisite notice but that she has not filed for letters of grant. Indeed the record shows that on 16/11/2016 the Citee was given 30 days to obtain certain documents relating to the assets of the deceased and that the hearing of the citation was agreed by consent to proceed on the 21/03/2017. However, it is noted that the citee has not filed any reply to the citation and neither filed for Petition for letters of grant upon entering an appearance on the 12/11/2015. It is further noted that the Citee has not challenged the Citor's relationship with the deceased. In fact the Citee had filed a replying affidavit to the Citor's Application dated 21/03/2016 which was later withdrawn and in the said replying affidavit the Citee had deponed that family and clan members had entered a Memorandum of Understanding (M.o.U) with the Citor in which her status and children had been acknowledged and some property allocated to her. Hence it is therefore quite clear that the Citor and her children are rightful beneficiaries of the estate of the deceased herein and that she is entitled to be allowed to file for grant of letters of administration in the event of reluctance by the Citee to do so.

In the result, it is the finding of this court that the Citor's Application has merit. The same is allowed. The Citee is hereby ordered to file Petition for grant of letters of Administration within the next thirty (30) days from the date hereof. In default the Citor shall be at liberty to proceed to file for the said Petition for letters of grant of administration.

Dated, signed and delivered at Machakos this...3rd .. day of ...APRIL ... 2017.

D. K. KEMEI

JUDGE

In the presence of:-

.Mburu for Thiongo for Citee....

C/A: Kituva.....