



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 37 OF 2016**

**IN THE MATTER OF THE ESTATE OF RUTH WANJIKU KARUGU - (DECEASED)**

**ANNE WAMBUI KARYGY.....CITOR**

**VERSUS**

**AMOS GIKONYO KARUGU.....1ST CITEE**

**EUNICE WANJIURU KARUGU.....2ND CITEE**

**RULING**

1. Anne Wambui Karugu (Citor) took out a citation against Amos Gikonyo Karugu and Eunice Wanjiru Karugu (Citees) requiring them to take out grant of letters of administration or in the alternative renounce their right to petition for grant in the absence of which the Citor sought leave to proceed and petition for letters of administration.
2. The Citees entered appearance through the firm of Obura Mbeche & Company Advocates on 22nd November, 2016.
3. Hot on the heels of the entry of appearance on the same day M/s. Obura Mbeche & Company Advocates wrote to the Advocates for the Citor indicating that the Citees had taken out letters of administration. The Citor was required to sign General form which was already signed by other beneficiaries.
4. When the matter came before court on 18th January, 2017, the above information was relayed rendering the citation spent.
5. Counsel for the Citor sought costs which were opposed by counsel for the Citees.
6. Directions were given that parties address the court on the issue of costs through submissions. Both parties have filed.
7. The deceased died on 16th March, 2015. There appears to have been substantial delay on the part of the Citees in filing the petition.
8. The interesting bit is that all the parties herein are siblings. None stood in higher priority to the other.
9. It is claimed that it is the Citees who had documents and that they had no explanation for the delay.

10. The Citees on the other hand submit that it is the Citor who was uncooperative and at one time refused to co-operate and get a chief's letter.

11. have applied my mind to the claim for costs by the Citor.

12. True, costs follow the event, but for good reason, the court may give such order as to costs as it may deem fit.

13. This citation did not go into hearing. I am therefore disadvantaged in that there was no room to interrogate under what circumstances the delay on the part of the Citees was occasioned.

14. This is a question that would have required adducing of evidence and I cannot rely on the facts stated in submissions and whose veracity is not tested, as would evidence, to make a conclusive finding on who was at fault.

15. As stated earlier all the parties herein being children of the deceased were equal in priority in taking out letters of administration. There is no evidence that the Citor initiated the process and was hampered by lack of necessary documentation. Even if that was so, she had the opportunity and backing of the Law to move the court and demand from whomever the documents to enable the filing of the petition for grant of letters of administration.

16. I also noted that this is a family matter. Indeed the relationship between the parties herein is so close that good sense of judgment would demand that a cordial relationship be maintained as they proceed in the procedures of succeeding their parent. Awarding costs to one side, and not on well founded basis, would negate this objective.

17. Consequently, I make orders that each party is to bear its own costs.

Orders accordingly.

**Dated, signed and delivered at Nakuru this 19th day of July, 2017.**

**A. K. NDUNG'U**

**JUDGE**