



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CITATION NO.8 OF 2016

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN CHIMWANI ANAMI -
DECEASED**

AND

SAUL ANAMI KULAKHA alias

SAUL SAVALA AAMI) CITOR/APPLICANT

AND

1. PETRONILA KHAVETSA CHIMWANI

2. KENNEDY ANAMI CHIMWANI CITEES/RESPONDENTS

RULING

1. The citor/applicant, Saul Anami Kulakha, has filed a citation against Petronila Khavetsa Chimwani and Kennedy Anami Chimwani. The citation is supported by the affidavit of the citor in which he states that their family has two parcels of land, Isukha/Virhembe/742 measuring 1.4 hectares and Isukha/Mukulusu/828 measuring 0.46 hectares. That during land registration exercise Parcel No. Isukha/Virhembe/742 was registered in the name of his late brother John Chimwani Anami who was the husband of the 1st cite and father to the 2nd citee. That the other parcel Isukha/Mukulugu/828 was registered in the name of the citor. That the citor occupies half of land parcel Isukha/Virhembe/742 while the family of his brother John Chimwani Anami (i.e. the citees) occupies the other half. That land parcel No. Isukha/Mukulusu/828 is occupied by himself where he occupies half of the land while the other half is occupied by a son of his late brother by name Chimwani Murunga Mark. That since the two parcels of land are family land he has sub-divided land parcel Isukha/Mukulusu/828 so as to transfer half of it to the son of his late brother. That he has approached his sister-in-law, the 1st cite and his nephew the 2nd cite and requested the .. to initiate succession proceedings against the estate of his late brother John Chimwani Anami so that land parcel No. Isukha/Virhembe/742 is shared out between the two families but that the citees have declined to do so. When further discussions did not bear fruit, the citor took out these citation proceedings against the citees. The citees were served. They did appear in court. However they have declined to file succession proceedings on the ground that land parcel No. Isukha/Virheme/742 is not family land and solely belongs to the late John Chimwani Anami and by extension to them. That the other parcel of land Isukha/Mukulusu/828 belongs to the citor.

2. Upon refusal by the citees to file the succession cause, the court by ann order made on 30th June 2016 granted permission to the citor to take out grant of letters of administration intestate to the estate of John Chimwani Anami. However, the citor encountered another huddle as he could not file a succession cause

without a death certificate of the deceased to prove his death.

The advocate for the citor Mr Mukavale then approached this court and asked the court to order the citees to release the death certificate to the citor to enable him file the succession cause. In the alternative the advocate requested the court to make an order to allow the citor to file the succession cause without being accompanied with a death certificate of the said deceased. The court is thereby required to rule whether to order the citees to release the death certificate to the citor or to allow the citor to file the succession cause without production of a death certificate. The advocate for the citor submitted that the issue whether land parcel No. Isukha/Virhembe/742 is family land or not should be raised in the succession cause for the determination by the court and not now. The citees did not respond to this submission.

3. Rule 7(1) of the Probate and Administration Rules stipulates the particulars that are required when one is applying for a grant of representation. Rule 7(2) provides that:-

“There shall be exhibited (in the affidavit) a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available.”

4. An applicant to a grant of letters of administration has therefore to attach a document to prove the death of a deceased person. The citor cannot file the succession cause without a copy of the said document. It is therefore imperative for the citor to access a copy of the said document to enable him file the succession cause. The order of the court granting him permission to file the succession cause would be in vain if the court cannot enforce an order for him to obtain a copy of the death certificate from the citees. The citees are widow and son of the deceased herein. They can easily obtain the death certificate, if they already don't have it. They have deliberately refused to issue the citor with a copy of the same because they do not want him to file the succession cause.

5. The citor has established that he has a strong case against the citees. Whether the land in issue is family land or not is an issue to be canvassed in the succession cause. I thereby make an order that the citees do provide the citor with a photo copy of a certificate of death of the late John Chimwani Anami within one month from the date of delivery of this ruling, failure to which the citor is at liberty to cite them for contempt of court.

Delivered, signed and dated at Kakamega this 13th day of July, 2017.

J. NJAGI

JUDGE

In the presence of:

Mukhwana H/B Mukavale.....for applicant

for respondents - absent

Paul court assistant

1st citor present