



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**SUCCESSION NO. CASE NO. 89 OF 2015**

**IN THE MATTER OF ESTATE OF THE LATE JAMES ODERA**

**AND**

**IN THE MATTER OF CITED: TERESIA OKELLO ODERA, JAMES OMEYO ODERA &  
DICKSON OUMA ODERA – CITEES**

**AND**

**JOHN GODIA ..... CITOR**

**CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE**

**(CORAM: J. A. MAKAU – J.)**

**RULING:**

1. The Citor through a citation to accept or refuse Letters of Administration Intestate to the three Citees namely: Teresia Okello Odera, James Omeyo Odera and Dickson Ouma Odera dated 8th October 2013, sought the three to accept or refuse Letters of Administration Intestate to the Estate of the late James Odera as the citor intends to file a Petition for Revocation of Grant obtained by the deceased James Odera in PMCC Succession Cause No. 43 of 1989.

2. The Citor relied on his Affidavit of Support dated 7th October 2013 in which he has deponed *interlia*, that he is grandson of the late Ooko Okulo (**deceased**) who died on 15th September, 1968, that the deceased herein is his uncle who applied for Letters of Administration over the Estate of the Citor's grandfather Ooko Okulo in **Siaya PMCC Case No. 43 of 1989**. The same was confirmed on 11.1.1991 as per annexure. “**J G-1 & 2.**”, that the late James Odera the Petitioner in PMCC 43 of 1989, failed to disclose to the court the existence of other beneficiaries, in the said succession cause, thus provoking the Citor to apply for the revocation of the grant, that an order for revocation of the grant was issued as per annexure “**JG-3**”, that he tried to enforce the order but was informed that Siaya Law Court had no jurisdiction to entertain the application for revocation of the grant and as such the order could not be enforced by the Land Registrar, that before the applicant could file an application for revocation of the grant at the High Court the Petitioner died on 27th May, 2007, that at the time of the Petitioner's death he had transferred the only asset of the deceased Estate viz title **Nos. South Ugenya/Yiro/1157** into his name as per annexure “**JG – 4**” (*see certificate of Official Search*).

3. The Applicant's intention is therefore to apply the High Court to revoke the grant issued to the deceased herein in Magistrate's Court at Siaya and therefore need to have an Administrator to the deceased's estate in place.

4. The Citees being wife to the deceased James Odera and sons respectively were served with citation to accept or refuse Letters of administration intestate and to date have not filed response or taken up grant in respect of the deceased's estate which the citor thought was the proper way to take so as to pursue his intended revocation of the grant issued to James Odera (*deceased*).

**1. Rule 22 (1) (4) (5) (a) of The Probate and Administration Rules provides:-**

***“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.”***

***4. A person cited who is willing to accept or take a grant may petition the court for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.***

***5. If the time limited for appearance has expired and the person cited has not entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.***

***(a) In the case of a citation under subrule (1) petition the court (if he has not already done so) for a grant to himself.”***

6. In the instant application the Citor is a grandson of the original proprietor of land parcel **South Ugenya/Yiro/1157** one Ooko Okulo who died on 15th September 1968 and whose estate James Odera, his son, and uncle to the Citor petitioned for the grant of letters of administration intestate excluding the Citor who is entitled as grandson of Ooko Okulo, after the death of his father.

7. The Citees are granddaughter-in-law and her children who have equal rights to the estate of Ooko Okulo as the Citor. The three citees were served with citation to accept or refuse letters of administration to the Estate of James Odera in the year 2013 and to date have not entered an appearance or petitioned for the grant for the last 3 years or so. The grant issued to James Odera on the other hand has already been confirmed and title deed issued to him on 11.1.1991.

8. The Citor seeks to have the grant issued revoked as it was obtained without involving him and disclosing his interest. He prays for the Citees to be called upon to Petition for the Letters of Administration in respect of the Estate of James Odera to enable him have the grant revoked.

9. I have carefully considered the application and the main issue for consideration is whether the Citor has established that he is entitled to grant in event the persons cited renounce their rights and or whether he has established a *prima facie* case to warrant the Citees in the alternative nominated to represent the interest of the deceased estate in respect of the Citor's intended/pending application for revocation of grant?

10. Having considered the unchallenged affidavit of the Citor in support of his application for citation to accept or refuse grant of letters of administration in respect of the estate of James Odera, I am satisfied that the Citor is entitled to a share of the deceased's estate, thus his grandfather's estate.

11. In the instant application I am dealing with the intended application for revocation of the grant issued to James Odera (*deceased*) in respect of the estate of Ooko Okulo and not that of the deceased James Odera and citing the Citees to petition for the grant in respect of the Estate of James Odera would defeat the interest of justice in respect of the Citor's intended application for revocation of the grant, as the grant that would be sought to be revoked in the circumstances, would be over the estate of James Odera and not that of Ooko Okulo in which citor has interest or claims. I am also alive of the fact that by virtue of **Section 76 (e) of the Law of Succession Act** the grant issued to James Odera has become useless and inoperative through subsequent circumstances, thus following the death of the petitioner James Odera. That to do justice to all parties I have to invoke the provisions of **Article 159 (2) (d) of the Constitution** which provides that justice be administered without undue procedural technicalities.

12. In the interest of doing substantive justice to all parties herein, I shall have the widow and sons of the deceased James Odera be enjoined as interested parties in the Citor's application or intended application for revocation of the grant in respect of grant issued to James Odera which application upon filing should be served upon Teresia Okello Odera, James Omeyo Odera and Dickson Ouma Odera the interested parties to the estate of Ooko Okulo to enable court decide on merits the application for revocation of the grant and any other orders that may be sought.

13. The upshot is that Citor is allowed to promptly file an application for revocation of grant, serve the same upon the Citees/interested parties in respect of the estate of Ooko Okulo and set the application down for hearing within 60 days from the date of this ruling as the succession cause subject of the intended application/or application filed in PMCC Succession Cause No. 43 of 1989 is now over 27 years old without being resolved. Costs shall be in the cause.

**DATED SINED AND DELIVERED AT SIAYA THIS 10TH DAY OF MAY 2016.**

**J. A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT IN THE PRESENCE OF:**

**Citor in person – present**

**Citees in person – Absent.**

**Court Clerk: Kevin Odhiambo**

**Court Clerk: Mohammed Akide**

**J. A. MAKAU**

**JUDGE**