



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCN. CASE NO. 451 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE MAKANYA KUBUTHA(DECEASED)

EPHANTUS N. MARINGA.....PETITIONER

VERSUS

NDARU MAKANYA.....RESPONDENT/1ST CITEE

NJERU MAKANYA.....RESPONDENT/ 2ND CITEE

NTHIGA MAKANYA.....RESPONDENT /3RD CITEE

RULING

1. Ephantus Maringa, the citor/petitioner and the applicant in this citation filed a summons general under Rules 21, 22(5) and 73 Probate and Administration Rules seeking the following orders from this court:

- i. An order to require and order Ndaru Makanya, Njeru Makanya and Nthiga Makanya to take out a grant of letters of administration in respect of the estate of Makanya Kubutha within 21 days failing which he grant to be issued to the applicant.
- ii. That the costs of this application be provided for.

2. The application is anchored in the supporting affidavit of the applicant dated 15/03/2016 and on the grounds on the face of the summons general. According to the applicant, he served the three respondent/citees with a citation dated 31/01/2013 in terms of form 32. The grounds in support of the application are that the citees were served with the citation dated 31st January 2013. Additionally the citees have never entered appearance. Additionally the citees have never entered appearance or filed an answer to the citation and that the respondents have a prior right to administer the estate of the deceased. And finally the applicant is entitled to a share in the estate of the deceased. The respondents have never entered an appearance or filed an answer to the citation. He has also stated that the respondent had a prior right to administer the estate of the deceased.

3. The application is grounded in his supporting affidavit. In that affidavit the applicant has stated he is the grand son of the deceased and is entitled to a share in the estate. He has further stated that he served the respondents with a citation to accept or refuse to take letters of administration in respect of the estate of the deceased. He has also stated that the respondents have never entered appearance or filed an answer to the citation. He has further state that the respondents are not keen to administer the estate of the deceased or have the same distributed to the rightful beneficiaries. Finally it also his affidavit evidence that he be appointed as the administrator of the estate if the respondents/citees refuse to accept the said grant within 21 days.

4. The hearing of this application proceeded in the absence of the respondents. I was satisfied that they were properly served and had adequate notice of hearing, which is clear from the affidavit of service dated 11/05/2016

5. The application is unopposed. I find from the applicant's affidavit evidence that the respondents/citees have refused to take out the grant of letters of administration in respect of the estate of the deceased. I also find that they were properly served with the citation and they failed to enter appearance and/or failed to file an answer thereto.

6. Finally I find that they had a prior right to administer the estate of the deceased but failed to do so. I believe the affidavit evidence of the applicant that as the grandson of the deceased he is entitled to a share in the estate of the deceased.

In the light of the foregoing, I grant the applicant's prayer 1 in terms of his summons general dated 15th March 2016.

7. There will be no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 6th day of **June 2016**

In the absence of both counsel for the petitioner and the respondents.

Court clerk **R. Njue**

J.M. BWONWONGA

JUDGE

06/06/2016