



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO.1206 “A” OF 2012

IN THE MATTER OF THE ESTATE OF ZEBEDAYO ASHIONA MIHESO (DECEASED)

SABBY MAKHAYA LUSALENJI.....CITOR

VERSUS

MARGARET KHALILI.....CITEE

R U L I N G

Introduction

1. The Citor SABBY MAKHAYA LUSALENGE took out a citation requiring the citee MARGARET KHALILI within fifteen (15) days to enter appearance at the principal registry and accept or refuse to take out Letters of Administration of all the estate which by law devolves to and vests in the personal representative of the deceased or show cause why the same should not be granted to her.
2. In her affidavit in support of the citation the citor claims to be the beneficiary to the estate of ZEBEDAYO ASHIONA MIHESO (DECEASED) by virtue of being the administrator. She also claims that her husband bought a portion of land No.Soisambu Scheme Plot No.364 measuring 4 acres or thereabout from the deceased herein as shown by a copy of an agreement “SML 1”. She adds that the citee has refused to take out Letters of Administration to enable her hive off her four (4) acres and has remained defiant when requested to do so. She maintains that there is no balance on the part of the purchase price as it has been fully paid.
3. For the above reasons the Citor believes that the family of his deceased father is entitled to share of the deceased’s estate hence, these proceedings.

Response by Citee

4. The Citee entered appearance through KASSIM SIFUMA & ASSOCIATE ADVOCATES and also filed a replying affidavit. She claims that the citation is aimed at taking away her family land. She adds that the citor lacks capacity to bring this citation because she does not have Letters of Administration of the estate of her deceased father ABSAI L. ADELI rendering the citation incompetent. She also claims that there is no evidence to prove that indeed the citee is the widow of the aforesaid ABSAI L. ADELI. She further claims that the agreement SMI - 1 – 1 is a forgery.
5. She also claims that the citor had earlier claimed only half an acre when the deceased was still alive but has now changed and even manufactured the sale agreement. She maintains that the balance of the

purchase price amounting to Kshs.36,000/= was never cleared. She claims to have been left with only one (1) acre by the deceased who sold the rest of his land third parties. She wants the citation dismissed with costs.

Submissions

6. Parties agreed to canvas this application by way of written submissions. However, it is only the Citor's submissions which are on record. The Citor has dwelt on the law and submits that the purpose of a citation is to call upon that person who is entitled to take out Letters of Administration of the estate of a deceased person to come out and accept or refuse to take out the Letters of Administration. He has relied on rules 21 and 22 of the Probate and Administration rules under the Law of Succession Act and submits that a citation cannot be opposed.

7. The Citor further submits that according to sub-rule 5 of rule 21 of the Probate and Administration Rules, the Citee is only entitled to file or enter appearance and thereafter under sub-rule (1) of rule 22 renounce the right to accept a grant of administration. In conclusion, the citor submits that the replying affidavit herein is wrongly on record and should be struck out.

Determination

8. Citations are covered in Part VII of the Probate and Administration Rules. Rules 21 to 23 apply to the instant matter together with the provisions of Section 62 of the Law of Succession Act Cap 160 of The Laws of Kenya.

9. Under Rule 22 (1) of the Probate and Administration Rules: "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." The Citee herein opposed the citation by filing a replying affidavit. The law is clear that a citation cannot be opposed. Under the provisions of rule 21 (5) of the Probate and Administration rules "A person who has been cited to appear, may within 15 days of service of the citation upon him, inclusive of the day of such service, or at any time thereafter if no application has been made by the Citor under rule 22(5) or rule 23 (2) enter appearance by filing form 27 and shall forthwith thereafter serve the Citor a copy of that form sealed with the seal of the registry. Provided that the Registrar may in any case at the time of issue of the citation increase the period of 15 days to such period as he thinks fit."

10. It is clear from the papers filed herein that the above provisions have not been complied with by the person cited. She has decided to file documents which are not recognized by the rules. In the circumstances the replying affidavit by MARGARET KHALILI dated 21/02/2013 and filed in Court on 22/02/2013 is ordered struck out for being improperly before the Court.

11. The Citee is therefore ordered to either accept or refuse to take out Letters of Administration to the estate of the deceased herein within the next thirty (30) days failure to which the Citor shall be at liberty to take out Letters of Administration intestate to the estate of the deceased herein.

12. Orders accordingly.

Ruling delivered, dated and signed in open Court today at Kakamega this 2nd day of June 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Mukabwa for Kahi for Citor

N/A (M/s Kassim Situma) for Citee

Mr. Lagat - Court Assistant