

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HC SUCC CAUSE NO. 83 OF 2014

IN THE MATTER OF THE ESTATE OF CHARLES SIRAGO OLUOCH(DECEASED)

AND

**IN THE MATTER OF CITATION TO ACCEPT OR REFUSE LETTERS OF
ADMINISTRATION**

BETWEEN

MORRIS OLUOCH OMOGI)

JARED OCHIENG OMOGI).....APPLICANTS

VERSUS

BEATRICE SIRAGO.....RESPONDENT

RULING

The applicants approached this court by way of a citation issued to Beatrice Sirago who they say is the widow of Charles Sirago Oluoch(deceased) for refusing to take out letter of administration into his estate whereas he had “**placed restrictions**” on parcels of land for which they are the beneficiaries. It is their contention that while the restrictions remain in place they cannot bring succession proceedings in respect of the parcels of land. They were represented by Mr. Nyanga from the inception of the cause.

The Citor though duly notified of this cause and the hearing date did not attend and so the matter proceed exparte. Mr. Nyanga also filed written submissions. He has framed issues for determination which in my view are not capable of being answered at this stage of the proceedings. Only once they have filed a succession cause and the court has heard them and any other party that may become interested can this court determine whether they are entitled to the land parcels. The question whether the respondent is entitled to share in the estate is also incapable of being determined at this stage. Under ordinary circumstances where a person cited refuses to attend or to take out letters of administration the court issues the letters of administration to the **Citor**. However, in this case what this court is being asked to do is to remove the restrictions placed on the parcels of land by thew **Citee`**s husband. That is not within the jurisdiction of this court to do. Moreover, what we have are not cautious but restrictions which are placed on the land by the Land Registrar under **section 76** of the Land Registrar Act yet it appears that this application was brought without notice to him/her as required under **section 78(3)** of the Land Registration Act. The consequence is that this application which is disguised as a citation under **rule 22** of the Probate and Administration Rules is discriminated. There shall be no order for costs the citee having not entered appearance. It is so ordered.

E.N. MAINA

JUDGE

Signed, dated and delivered in Kisumu this 5th day of March, 2015

In the presence of:

Mr. Nyanga for applicants

Morris Oluoch Omoga-Applicant

Jared Ochieng Omogi-

Court clerk; Moses Okumu