



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 369 OF 2013**

**IN THE MATTER OF THE ESTATE OF SIMEON KYAMBINU MULWII (DECEASED)**

**ALICE NTHULE WAMBUA .....APPLICANT/CITOR**

**VERSUS**

**SERA KATUMBI MULWA ..... RESPONDENT/CITEE**

**R U L I N G**

1. The citation to **Sera Katumbi Mulwa** to accept or to refuse Letters of Administration intestate in the estate of **Simeon Kyambinu Mulwa** was filed on 27/5/13 by **Alice Nthule Wambua**. The Citor has described herself as a daughter to the deceased and described the Citee as a daughter in-law to the deceased. The Citor who is desirous of obtaining Letters of Administration to the estate of the deceased accuses the Citee of having intermeddled with the estate of the deceased without taking out Letters of Administration.
2. A **Chamber Summons** application expressed to be under **section 45 and 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules** was filed contemporaneously with the citation. The **Chamber Summons** seeks orders to restrain the Respondent/Citee from intermeddling with the estate of the deceased.
3. The citation was objected to by the Citee. The citation is objected to on the grounds that are in details regarding the death of the deceased or the assets or liabilities that require to be administered. It is further averred that there are other beneficiaries to the estate of the deceased who have prior rights to the both the Citor and the Citee to the estate of the deceased who died over 30 years ago.
4. A Preliminary Objection was raised against the **Chamber Summons** application dated 27/5/13 on the following grounds:-

**1. The Applicant is not and has not been duly appointed a personal representative of the estate of the said Simeon Kyambinu Mulwii and accordingly cannot lawfully sustain the said application.**

**2. Until and unless the Citation dated 27<sup>th</sup> May 2013 has been granted and letters of administration duly granted to the Applicant in the manner prescribed by law, the Applicant has no lawful authority to file the present application for injunction/restraining orders.**

**3. Restraining/injunction orders cannot issue when proof of alleged death of deceased is absent and existence of the alleged assets as belonging to the deceased is not demonstrated by production of Title documents.**

**4. The application is incompetent and unsustainable in law in so far as Section 45 of the Law**

of Succession Act **makes no provision for injunctions/restraining orders.**

**5. The Applicant not being a personal representative is a total stranger to the deceased's estate and cannot sustain this application."**

5. It is noted that the Applicant/Citor has alleged that there is intermeddling with the properties of the deceased. **Section 45 of the Laws of Kenya Act Cap 160** Laws of Kenya stipulates as follows:-

1. **"Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.**
2. **Any person who contravenes the provisions of this section shall-**
  - a. **be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and**
  - b. **be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration."**

6. The issues raised by the Applicant/Citor touch on intermeddling of the estate of the deceased. If indeed the alleged intermeddling exists, then an offence has been committed and the full force of the law as stated above ought to be applied.

7. It is noted that Letters of Administration have not yet been issued. The issue that arises is whether the court can entertain the application for an issuance of the Letters of Administration. **Section 47 of the Law of Succession Act** provides as follows:-

**"The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient."**

8. However, I am persuaded by the decision in **Christine Achieng Ogesa & Another –vs- British American Asset Managers Ltd (2012) eKLR:-**

**"Without a grant of representation or a special limited grant ad colligenda bona, the Applicants have no legal capacity to sue the Respondent as yet for payment to them of the money the deceased's estate is entitled to. Indeed, section 45 (1) of the Law of Succession Act prohibits intermeddling with the property of a deceased person and section 45 (2) creates penal sanctions for intermeddling."**

9. **Section 46 (1) of the Law of Succession Act** also provides for the protection of the property of the deceased person by the police or administrative officers. The Applicant/Citor has not demonstrated that any such help has been sought in regard to the alleged intermeddling.

10. Both the Applicant/Citor and the Respondent/Citee allege to be beneficiaries to the estate of the deceased. There is no reason why there has been no petition for a grant of Letters of Administration.

11. With the foregoing, I uphold the Preliminary Objection and strike out the application dated 27/5/2013 with costs.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 15<sup>th</sup> day of May 2014.**

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**B. THURANIRA JADEN**

**JUDGE**