

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**CITATION CAUSE E743 OF 2024**

***IN THE MATTER OF THE ESTATE OF EDWARD NYAKALA MUKINDU***  
***(DECEASED)***

<b>MUSAH S. BIBOH</b>	.....	<b>CITOR</b>
	<b>VERSUS</b>	
<b>EMILY BASWETI MAINA</b>	.....	<b>CITEE</b>

**RULING**

1. Before the Court is Citation to Accept or Refuse Letters of Administration Intestate, dated and filed on 11 September 2024. The Application is brought pursuant to the provisions of Rules 21 and 22 of the Probate and Administration Rules, invoking the supervisory and corrective jurisdiction of this Court over the administration of the estates of deceased persons.
2. The Citor approaches this seat of justice not as a beneficiary or a kinsman of the Deceased, but in the capacity of a creditor. His claim is predicated upon a tortious liability—specifically, a claim for unliquidated damages arising from a fatal road traffic accident that occurred on 14 July 2013, involving the Citor’s motor vehicle and that of the late Mukindu Edward Nyakala (Deceased).
3. The Citee is the widow of the Deceased. By virtue of Section 66 of the Law of Succession Act, she holds the primary, albeit not absolute, priority to petition

for the administration of her late husband's estate. The gravamen of the Citor's application is that the Citee has, for a period exceeding a decade, wilfully neglected, failed, or refused to take out a full Grant of Letters of Administration, thereby creating a procedural impasse that has frustrated the Citor's ability to litigate his claim for compensation.

4. The Citee failed to enter an appearance or respond to the Citation despite having been served. The Citor now moves the Court, consequent to the Citee's default, for orders compelling the administration of the estate or, in the alternative, for the issuance of a grant to the Citor himself limited to the purpose of filing suit.
5. On 14 July 2013, a road traffic collision occurred along Langata Road, Nairobi, involving Motor Vehicle Registration Number KAK 641G (Toyota Saloon), owned by the Citor, and Motor Vehicle Registration Number KBC 050F (Toyota Prado), owned and driven by the Deceased. The Citor avers that the Deceased drove negligently, resulting in a head-on collision that caused the Citor's vehicle to be written off and resulted in the death of the Deceased on the same day. A Police Abstract dated 6 October 2013 confirms the occurrence.
6. Following the rejection of liability by the Deceased's insurers, Real Insurance, in December 2014, the Citor instituted Milimani Chief Magistrate Court Civil Suit No. 4483 of 2016 - *Musah S. Biboh vs. Emily Basweti Maina (sued as the legal representative of the estate of the Late Edward Nyakala Mukindu)*. It is a matter of record that the Citee entered an appearance in that suit but subsequently raised a Preliminary Objection dated 9th May 2022, contending that the Citee lacked the capacity to be sued as she had not obtained a Grant of Representation as required by the Law of Succession Act.

7. In a Ruling delivered on 24 February 2023, the lower court upheld the Preliminary Objection and struck out the suit. The learned Magistrate, citing the authority of ***Julian Adoyo Ongunga vs. Francis Kiberenge Abano (Migori Civil Appeal No. 119 of 2015)***, correctly held that a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit. The suit as initiated becomes void *ab initio*. The Magistrate further noted that without obtaining grant of letters of administration *ad litem*, the defendant would be like people who have entered a closed room without opening the door.
8. The tragedy of the Citor's position is compounded by the revelation that the Citee had in fact initiated succession proceedings. The record shows that she filed Succession Cause No. HC.P&A/2720/2014 jointly with the Deceased's brother, Godfrey Mukindu. This petition was gazetted in the Kenya Gazette Notice No. 8723 on 20 November 2015.
9. However, the Citee failed to move the court for the confirmation of the Grant within the statutory period. The cause was marked by lethargy, revoked, reactivated in 2019, and finally struck out/terminated on 10 May 2022 for want of prosecution. This effectively left the estate unadministered and the Citor without a legal entity to sue.
10. Faced with the dismissal of his civil suit and the striking out of the Probate cause, the Citor issued a demand letter on 7 August 2023, urging the Citee to regularize the estate's administration. The letter was received on 24 October 2023 but elicited no action. Consequently, the Citor filed the instant Citation on 11 September 2024.
11. Despite being served on numerous occasions, the Citee did not enter appearance.

12. The jurisdiction of this Court to hear and determine this Citation flows from Section 47 of the Law of Succession Act, which vests the High Court with jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders as may be expedient.
13. Specifically, the machinery of Citation is governed by Part VI of the Probate and Administration Rules (Rules 21–24). A citation is a command by the court to a person who has a superior right to a grant, in this case, the widow/Citee, calling upon them to accept or refuse the grant, or to show cause why it should not be granted to the person issuing the citation.
14. The purpose of a citation, as established in *Re Estate of Anthony George Kimanthi (Deceased [2019] KEHC 2564 (KLR))* is to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court. It acts as a procedural catalyst to prevent the locking of an estate by inert beneficiaries to the detriment of creditors and other interested parties.
15. The Citor seeks to compel the Citee to take out a grant or, upon her refusal, for a grant to be issued to him. The Citee, as the widow, holds the first priority to administer the estate under Section 66(a). However, this priority is not a shield against accountability. Where a priority holder fails to administer the estate, Rule 22(1) of the Probate and Administration Rules allows a person with a subordinate right to issue a citation.
16. The Citor is a creditor. Section 66(d) of the Act explicitly recognizes creditors as persons entitled to a grant of administration. While creditors rank lower than spouses and children, their right to administer crystallizes when higher-ranking beneficiaries abdicate their duties.

17. The evidence confirms that the Citee has "intermeddled" procedurally by filing a cause in 2014 and then abandoning it. She has successfully used the lack of a confirmed Grant to defeat the Citor's civil claim in the lower court. This conduct is inequitable and contrary to the overriding objective of the Act, which is to facilitate the orderly administration of estates.

18. Rule 22(5) of the Probate and Administration Rules sets out the consequences of a citee's failure to appear:

*If the time limited for appearance has expired and the person cited has not entered an appearance... the citor may... petition the court (if he has not already done so) for a grant to himself.*

19. The Citee was served and had 15 days to enter an appearance (Rule 22(5)). She failed to do so. This default technically empowers the Citor to apply for a grant to himself.

20. The Citor has prayed for the Citee to take the grant or for the Court to issue it to him. This raises a critical question: *Should a creditor be issued a full grant of letters of administration intestate?*

21. While Section 66 allows it, judicial practice urges caution. A full Grant empowers the administrator to collect assets, pay debts, and distribute the residue. A creditor holding a full grant faces an inherent conflict of interest. He would be the administrator (defender of the estate) and the claimant (suing the estate). He cannot sue himself. Moreover, a creditor usually has no interest in the distribution of the estate to the beneficiaries; his interest is limited to the satisfaction of his debt.

22. The appropriate remedy in such circumstances is found in Section 54, which allows the court to issue grants limited by purpose. Paragraph 14 of the Fifth Schedule to the Act provides for a "Grant limited to suit" (Grant Ad Litem).
23. In ***Re Estate of Priscila J. Malel (Deceased) [2021] KEHC 8481 (KLR)***, the Court held that a citation can trigger the issuance of a limited Grant to the citee or citor to facilitate pending litigation.
24. The Magistrate in the struck-out civil suit correctly identified that the Citee needed a Grant *ad Litem* to be sued. The Citor's goal is to reinstate that suit.
25. Since the Citee has refused to take out the grant voluntarily, the Court must intervene to prevent the estate from remaining in a legal limbo that prejudices the creditor. The Court cannot physically force the Citee to sign the petition papers. However, the Court can order that she be constituted the administrator *ad litem* by operation of the law and this order, or appoint the Citor as administrator *ad litem* with specific directions.
26. If the Court grants administration to the Citor *ad litem*, he would be the Plaintiff (in his personal capacity) and the Defendant (as Administrator). This is legally untenable. The estate requires a separate defendant.
27. Therefore, the most pragmatic order, and one within the wide discretion of this Court under Section 47, is to issue a Limited Grant of Letters of Administration to the Citee, limited *solely* for the purpose of defending the estate in the intended civil suit. In the event she continues to refuse to participate, the Citor requires a mechanism to proceed. The law allows for the Public Trustee to step in under Section 66(c). However, invoking the Public Trustee at this stage may cause further delay.

28. A more robust approach, supported by the inherent powers of the Court to prevent abuse of process, is to deem the service of this order upon the Citee as constituting her the legal representative for the purpose of the civil suit. If she fails to defend the civil suit after being served with this Order and the pleadings, the civil court is at liberty to enter judgment in default against the estate.
29. Consequently, I hereby issue the following Orders:
- (i) The Citation dated 11 September 2024 is hereby upheld.
  - (ii) A Grant of Letters of Administration Intestate *Ad Litem* is hereby issued to the Citee limited solely for the purpose of representing the Estate of MUKINDU EDWARD NYAKALA in any civil suit instituted by the Citor, arising from the road accident of 14 July 2013;
  - (iii) This Order shall serve as the Grant of Representation for the purposes of establishing *locus standi* in the said civil suit.
  - (iv) In the event the Citee, having been served with this Order and the civil suit pleadings, fails to enter appearance or defend the civil suit, the court shall be at liberty to proceed against the Estate as represented by her in default.
  - (v) Costs of this Citation Cause are awarded to the Citor, to be borne by the Citee personally.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER 2025**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Citor: Mr. Mukuha h/b Mr. Bwire

Citee: No appearance

Court Assistant: Lucy Mwangi

Ruling