



REPUBLIC OF KENYA



**In re Estate of Clement Solomon Muna (Deceased) (Citation Cause
22 of 2023) [2025] KEHC 5401 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CITATION CAUSE 22 OF 2023**

AC MRIMA, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF CLEMENT SOLOMON MUNA (DECEASED)

BETWEEN

ANNE NJOKI MUNGA 1ST CITOR

REVEREND ARTHUR KABIRO 2ND CITOR

AND

SARAH MWIHAKI MUNA 1ST CITEE

ALLAN MUNGA MUNA 2ND CITEE

RULING

Background:

1. This ruling is in respect to the application by way of a Notice of Motion dated 4th December 2023. The application was instituted by Anne Njoki Munga and Reverend Arthur Kabiro, (hereinafter referred to as ‘the Applicants’) and mainly sought review orders. It was supported by the Affidavit of one Diana Nekoye, the Applicants’ Learned Counsel on record, deposited to on a similar date.
2. The application was vehemently opposed and was disposed of by way of written submissions thereby culminating with this ruling.

The Applicants’ case:

4. The application sought to review and/or set aside the order on costs issued on 2nd August 2023 in favour of the Cittees and any consequential orders thereto. It also sought for costs.
5. In the grounds in support of the application, the Applicants stated that the order for payment of costs by the Applicants was made without the disclosure by the Sarah Mwhaki Muna and Allan Munga Muna, the Respondents/Cittees herein, that there was a Court order from the Environment and Land



Court Kitale Case No. 27 of 2020, Anne Wambui Muna & 5 Others -vs- Anne Njoki Muna & 5 Others (hereinafter referred to as 'the Land case') directing the Citors to take out the administration of the estate of the deceased herein. The Applicants claimed that the Cittees were parties in the land case and had categorically stated that they were not going to take out any Letters of administration of the deceased's estate, a fact which prompted the Court to order the Applicants to take out the instant proceedings.

6. The Applicants pleaded that their Counsel on the material day inadvertently logged into the Environment and Land Court as opposed to this Court and by the time she was made aware of the mix up in the Court links, this Court had already pronounced itself on the issue of costs. It was their case that it took their Advocate time to get through to the Environment and Land Court to extract the Order, the subject of this application. The Applicants pleaded that the failure to attend Court on 2nd August 2023 was an inadvertent mistake by the Counsel which ought not be visited upon them. They asserted that the order for costs was issued without the Cittees' Advocate disclosing that they are the ones who insisted they would not take out the Letters of Administration of the subject estate, which led to the institution of the citation proceedings.
7. In the supporting Affidavit, Learned Counsel Ms. Nekoye reiterated that there was a Court order in the Land case that compelled the Applicants to take out citation proceedings and the Cittees herein were parties to the said case.

The Submissions

8. In its written submissions dated 18th March 2024, the Applicants, pursuant to the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 11 of the Civil Procedure Rules 2010 as well as the decisions in Benjoh Amalgamated Limited & Another -vs- Kenya Commercial Bank Limited (2014) eKLR, submitted that the orders of 2nd August 2023 meet the threshold for review. The Applicants further submitted that on the authority of the Court order dated 26th April 2023, the Citation Cause was bolstered and subsequently, a limited grant of Letters administration ad litem was taken out and issued to one Reuben Ng'ang'a Muna on 15th May 2023.
9. While referring to the decision in Sceneries Limited -vs- National Land Commission (2017) eKLR, on the duty of a person who approaches Court to disclose all material facts, it was submitted that this Court would have exercised its discretion judiciously in awarding costs had all material facts been placed before it.
10. In the end, the Applicant urged the Court to allow the application with costs.

The Cittees'/Respondents' case:

11. The Cittees opposed the application through a Replying Affidavit deposed to on 19th February 2024 and written submissions dated 24th April 2024.
12. It was their case that there is no ground for this Court to review its orders of 2nd August 2023 since the citation was filed on 25th April 2023 and the purported order in the Land case that supposedly instigated the institution of the citation was issued on 26th April 2023, a day after the Applicants had already filed the citation. The Respondent referred to the annexure of the Applicant's supporting Affidavit.
13. It was firmly asserted that the Court order directing the filing of a Citation in the Land case came after the citation had already been filed.



14. Submitting on the law, the Cittees asserted that sufficient cause in Order 45 Rule 1 of the Civil Procedure Rules means analogous or ejus dem generis to the other reasons stipulated in the order. As such, any other attempt, except on the grounds provided for in the law, would amount to an abuse of the Court process. To that end, the decision in *Nabiswa Wakenya Moses -vs- University of Nairobi & Another* (2019) eKLR was relied upon.
15. The Cittees then distinguished the decision in *Omote & another -vs- Ogotu* (2022) KEHC 16441 (KLR) and stated that in the case, the Court found that the threshold for a review had not been met. As regards the decision in *Benjoh Amalgamated Limited & Another -vs- Kenya Commercial Bank Limited* case (supra), it was submitted that despite the Court making the observation that not granting review orders would lead to miscarriage of justice, it still went onto decline the orders on the basis that the finality principle must be weighed against the justice principles.
16. The Cittees then submitted that given the chronology of events, the citation was an abuse of the Court process since there was no material non-disclosure on the date the impugned orders were issued. They maintained that the filing of the Citation preceded the Court Order in the Land case. The Cittees further claimed that the Citors assertion that they had refused to take out letters of administration was unsubstantiated. In addition to the foregoing, the Cittees claimed that citation was maliciously taken out against them as opposed to the deceased's next of kin and wife, Mrs. Anne Wambui Muna.
17. It was the Cittees' case that even if this Court were to rely on the Court Order in the Land case, the said order did not state who the citation was to be taken out against. It would only have been natural to be taken out against the deceased's next of kin as opposed to his children, who do not reside in the country.
18. In conclusion, it was their case that the Citors had not demonstrated how this Court applied the wrong principled or erred in appreciating the merits of the case before making the award of costs to the Cittees.

Analysis:

19. Having carefully perused the application, the response, the detailed parties' submissions and the decisions referred to therein [which this Court is immensely grateful to Counsel], the only issue for determination is whether the application meets the threshold for review of the impugned order on costs. Before delving into the merits of the application, a concise appreciation of the historical antecedents of the dispute becomes imperative.
20. Anne Njoki Munga, the 1st Citor herein, filed the Citation Application dated 24th April 2023. She claimed to be the biological sister of Clement Solomon Muna, the deceased herein, and that she had substantial interest in various parcels of land which had been indicated as forming part of the deceased's estate.
21. The 1st Citor pleaded that Sarah Muna and Allan Muna, the Cittees herein, being biological children of the deceased had not taken out letters of administration of the estate of the deceased. It was her case that since there was an ongoing suit in Environment and Land Cause No. 27 of 2020, [the Land case] which the deceased, herself and five others were defending by way of a counterclaim against three others in respect of the properties that formed the estate of the deceased, it would be proper if someone took out letters of administration for purposes of representing the estate of the deceased.
22. On 2nd August 2023, Learned Counsel for the Cittees, Mrs. Omano, informed Court that the Citation was filed 6 weeks after the death of the deceased and there was no correspondence from the Citors to the family of the deceased. Counsel also informed Court that the family of the deceased only learnt that a limited grant ad litem had been granted on 15th May 2023. As such, Counsel submitted that the Citation was filed in bad faith.



23. Upon assessing the evidence on record, this Court noted that the Limited grant Ad Litem was granted 3 months after the death of the deceased whereas the Citation was filed two months post the death of the deceased. Deductively, this Court found that the Citation must have been filed without any reference to the family of the deceased. The Court proceeded to observe thus: -
- ... It seems the Citors did not reach out to the family of the deceased before filing the proceedings otherwise they would have been informed of the then prevailing status which would have further informed them not to file these proceedings. The instant proceedings were therefore unnecessary....
24. For the foregoing reason, this Court marked the Citation as overtaken by events and ordered the Citors to bear the costs of the Citation. Aggrieved, the Citors lodged the instant application challenging the order on costs.
25. The proceedings of 2nd August 2023 are the heart of the application. This Court relied on the Cittees' Learned Counsel's submissions on costs and granted the request. The Citors' Counsel was late and this Court recalls that the Counsel eventually logged into the virtual Court, the Court informed Counsel of the order and declined to informally set it aside thereby leading to the application under consideration.
26. From the contents of the application and the response thereto, there is no doubt that the issue on costs was a contested one and had Counsel for the Citor successfully logged into the virtual Court timeously, this Court would have had an opportunity to deal with the issues with the advantage of hearing both sides. That, however, did not happen.
27. Given the contentious nature of this matter and more so since it involves family members, this Court ought to accord all parties an opportunity to fairly ventilate any issue in dispute including that of costs. To that end, and without more, the order on costs made on 2nd August 2023 ought to be reviewed and set aside. All the parties will then have to address Court on the aspect of costs. It is this Court's finding therefore, that the application is merited on the ground that there is a sufficient reason calling this Court to exercise its discretion in favour of the Applicants. Put differently, the Citors were not heard before the order on costs was made. That is an affront to Article 50(1) of *the Constitution*.

Disposition:

28. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
29. Accordingly, the following orders do hereby issue: -
- a. The order on costs issued on 2nd August 2023 be and is hereby reviewed and set-aside accordingly. Costs shall be in cause.
 - b. The matter shall be fixed before the Presiding Judge for directions on way forward.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE



Ruling virtually delivered in the presence of:

Miss Nyakinya Learned Counsel for the Applicants/Citors.

Miss. Shali, Learned Counsel for the Respondents/Cittees.

Amina – Court Assistant.

