



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PROBATE AND ADMINISTRATION CAUSE NO. E081 OF 2021

IN THE MATTER OF THE ESTATE OF NASSIR ALI SAID (DECEASED)

MOHAMED ALI.....CITOR

VERSUS

JAMILA NASSIR ALI

RAHMA NASSIR ALI

SALMA NASSIR ALI SAID OMAYER.....CITEES

RULING

1. The deceased herein Nassir Ali Said died intestate on 20th May 2018 leaving behind a widow by the name of Jamila Nassir and two daughters namely; Rahma Nassir and Salma Nassir as survivors. However, none of the said survivors has attempted to petition for a grant of representation in respect of the estate.

2. On 26TH July 2021, Mohamed Ali Abdalla (hereafter the citor) who claimed to have bought a piece of land from the deceased during his lifetime, filed a citation of even date seeking the said survivors (hereafter the citees), to show cause why they could not petition for the grant as persons entitled in priority in default he be permitted to petition for the same.

3. Despite being served with the said petition, the citees did not enter appearance nor file any objection to the citation pursuant to Rule 21(5) of the probate and administration rules(P&Rs). Consequently, the application was prosecuted exparte. During the hearing, M/s Nzamba appearing for the citor basically adopted the averments contained in the affidavit in support of the application.

4. I have considered the application herein which is not opposed. I have also considered the supporting material inter alia, a sale agreement reflecting the purchase of a parcel of land from the deceased person during his lifetime but which land had not been transferred to the citor. The citor's interest in the estate therefore is that of a creditor.

5. Under Section 66 of the law of Succession, the court is bestowed with wide discretionary powers to determine on whom to confer a grant of representation in the best interest of all concern, but without prejudice, the court shall accept as a general guide the following order of preference

a) Surviving spouse or spouses, with or without association of other beneficiaries

b) Other beneficiaries entitled on intestate, with priority according to their respective beneficial interests as provided by part v.

c) The public trustee and

d) creditors

6. Considering that the citor has attached a sale agreement as proof of the purchase of the said land from the deceased, he is deemed to be a creditor hence the amount paid to the deceased becomes a liability to the estate. Under rule 22 of the P&A rules, a citation may issue at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

7. In view of the dictates under Section 66 of the law of Succession Act and rules 21 and 22 of the P&A rules and considering that the citees have relinquished their right to petition for a grant of representation, the citor being an interested party in the deceased's estate as a creditor is entitled to petition for a grant of representation.

8. Accordingly, the citation application herein is allowed with directions that, the citees are hereby given 30 days within which to petition for a grant of representation in respect of the estate of the deceased in default the citor to petition for the same.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 22ND DAY OF DECEMBER 2021

J.N.ONYIEGO

JUDGE



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