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**IN THE HIGH COURT OF SIERRA LEONE
IN THE MATTER OF THE ESTATE OF
MAKALAY TURAY (DECEASED) INTESTATE**

BETWEEN:

IBRAHIM SORY TURAY. ----- PLAINTIFF

AND

MORLAI TURAY ----- DEFENDANT

Monday 20th
February 2006

Before Mrs. Justice
A. Showers J.

Case Called

V.V. Thomas Esq., for Defendant / Applicant

Amadu Koroma Esq. for Plaintiff

RULING

The Defendant in this matter is by Notices of Motion dated 4th November 2005 seeking to set aside the citation dated 20th September 2005 taken out by the Plaintiff herein on the ground that it is an abuse of the process of the court and for irregularity in that the court had already set aside an earlier citation dated 22nd April 2005 to bring in the same Grant for reason that the chain of representation to the estate of Makalay Turay was broken and that the letters of administration to the Estate of Alwalion Turay was ineffective to administer the estate of Makalay Turay (Deceased). The second ground is that the said citation dated 20th September 2005 does not disclose any valid reason in law for the citator as administrator of the estate of Alwalion Turay (Deceased) intestate to call upon the Defendant to bring in the grant of Letters of Administration in the estate of Makalay Turay (Deceased) as the chain of representation to the latter estate was broken on the death of Alwalion Turay on 16th March 2003.

In his submission to the Court, Counsel for the Defendant submitted that the complainant

herein is estopped from bringing in a fresh citation by the earlier decision of the court which had set aside the said citation. He submitted that Counsel's option if he was dissatisfied with the decision is to challenge it in the Court of Appeal and not to file another citation. He stated that the substitution of the name Makalay Turay for Alwalion Turay in the title of the present matter does not give him sufficient capacity to bring the action. He further submitted that the basis for the citation that is, that as administrator of the estate of Alwalion Turay, the citator is the fit and proper person to administer the estate of Makalay Turay has already been rejected. He argued that it was therefore an abuse of the process of the court for the complainant to bring in another citation based on the same ground. He therefore urged the court to set aside the citation filed herein.

In reply to the above submission, Counsel for the complainant / respondent stated that he has filed an affidavit in opposition. He denied that the citation is an abuse of the process of the court as the present citation is quite distinct from the earlier one and urged that it is not a mere substitution of the title of the estate as canvassed by Counsel for the applicant. He stressed that the citator herein has disclosed sufficient interest in the present citation to call in the Grant of Letters of Administration as he is the most fit and proper person to administer the estate of the late Makalay Turay. He stated that the applicant herein is not a son of the said late Makalay Turay nor a relative as alleged in the said Letters of Administration. He said that the citator has a legal right to call in the Grant of Letters of Administrator because the fact that as administrator of the estate of Alwalion Turay, when the said Alwalion Turay died, he became the proper person to administer the estate of Makalay Turay. That is sufficient reason in law to call in the said grant and it is not by any means an abuse of the process of the court.

Having heard the above submissions, the question now is, is the citation herein taken out by the complainant an abuse of the process of the court, in view of the fact that the earlier one had been set aside? Counsel for the complainant has strenuously argued that it is not as the citation is now intituled on the estate of Makalay Turay and it relates to that estate which is separate and distinct from the earlier citation taken out in respect of the estate of Alwalion Turay. Counsel, for the applicant has argued that the title of the estate may now be different but the basis for which the citatory is calling in the grant remains the same, and the court had already ruled on that. I agree with Counsel, for the applicant on this submission. The basis for the complainant calling in the grant is that he considers he is the fit and proper person to apply for the grant in view of the fact that he is already administrator of the estate of Alwalion Turay who was the administrator of the estate of Makalay Turay. The earlier citation was set aside on

the ground that he is not entitled to a grant as the chain of administration to the estate of Makalay Turay was broken and that the Letters of Administration to the estate of Alwalion Turay was ineffective to administer the estate of Makalay Turay (Deceased). I regret that there is no other way of stating this fact. This decision has already been taken and remains the same no matter that the citation is now taken out in the estate of Makalay Turay. I therefore agree that taking out a fresh citation on the same basis is an abuse of the process of the court.

With respect to the second ground of irregularity complained of, that is, that the citation does not disclose any valid reason in law for the citator to call in the grant of Letters of Administration in the estate of Makalay Turay, Counsel for the complainant has argued that the administrator of the estate of Makalay Turay is not entitled to the Grant as he is a stranger and not a relative of the late Makalay Turay. I ought to point out that the Grant was obtained by the applicant as the son of the Deceased Makalay Turay according to Susu Customary Law. Counsel has not shown nor disclosed any evidence to disprove this. He has merely stated that the complainant is the most fit and proper person to administer the estate of the late Makalay Turay (Deceased) because he is already the administrator of the estate of Alwalion Turay (Deceased) and that reason has already been rejected in the earlier citation.

In the circumstance I hold that the citation dated 20th September 2005 does not disclose any valid reason in law for the citator or complainant herein to call in the grant of Letters of Administration granted to the Defendant / applicant herein in the estate of Makalay Turay (Deceased).

The application is therefore granted and the citation dated 20th September 2005 herein is set aside.

A. Showers
A. Showers J