



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Narkiso Nyambok Onyando (Deceased) (Succession Cause  
E010 of 2021) [2023] KEHC 311 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 311 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
SUCCESSION CAUSE E010 OF 2021  
KW KIARIE, J  
JANUARY 23, 2023**

**BETWEEN**

**DOROTHEA NYAMBOK MCNEILL ..... 1<sup>ST</sup> APPLICANT**

**JUDITH D NYAMBOK ..... 2<sup>ND</sup> APPLICANT**

**JAMES MBAI NYAMBOK ..... 3<sup>RD</sup> APPLICANT**

**AND**

**SAMSON ODERO NYAMBOK ..... RESPONDENT**

**RULING**

1. The applicants herein moved the court by way of Notice of Motion dated January 6, 2022. The application is brought under section 63 (c) of the *Civil Procedure Act* They are seeking the following orders:
  - a) That pending the hearing and determination of the present application and the succession process, an order of temporary injunction do issue stopping the respondents from interfering with the enjoyment and stay of the applicant herein of his late mother's property or attempting to evict him from the house of his deceased mother.
  - b) That the applicant herein be granted leave to be enjoined as a party to the suit herein.
  - c) That this honourable court do order the respondents herein to amend their pleadings so as to include the applicant herein as a beneficiary of the estate of Narkiso Nyambok Onyando.
  - d) That the cost be in the cause.
2. The application was premised on the following grounds:



- a) That as per the records from the registrar of marriages, Javal Ochieng Nyambok is the son of the late Surriel Mbai Nyambok and Valery Salome Awuor Ochieng who are direct beneficiaries of the estate of the late Narkiso Nyambok Onyando – the applicant’s grandfather.
  - b) That stemming from the above fact, applicant is a direct beneficiary of the estate of the late Narkiso Nyambok Onyando.
  - c) That the plaintiff/respondent wilfully omitted the names of the applicants herein to the proceedings in Succession Cause No E010 of 2021 to deprive him of his legal inheritance from the estate of his deceased father who was a son of the late patriarch – Narkiso Nyambok Onyando.
  - d) That the plaintiffs/respondents are desirous of evicting the applicant herein from the house of his late mother, Valelry Salome Awuor Nyambok which he has always known to be his home.
  - e) That as a beneficiary of the estates of his deceased father, the applicant herein stands to suffer great loss if the application herein is not granted.
3. The objection was opposed on the ground that the application lacks merit.
  4. When a party appears in court in response to a citation to accept or refuse letters of administration, he has two options. One is to refuse and therefore the citor may seize the opportunity to file a succession cause in respect of the named deceased person. The second option is to file a succession cause and the file in respect of the citation is closed.
  5. It is therefore irregular for this application to be brought in this file. As far as the law is concerned, there is no succession cause in respect of the estate of Narkiso Nyambok Onyando, which has been filed. The orders sought cannot issue. The application is dismissed with costs and this file ordered closed.
  6. If the citee does not file a succession cause within 30 days of this ruling, then the citors be at liberty to file the same.

**DELIVERED AND SIGNED AT HOMA BAY THIS 23<sup>RD</sup> DAY OF JANUARY, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

