

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 115 OF 2012

IN THE MATTER OF THE ESTATE OF ISAAC JUMA RAKETO (DECEASED)

RULING

1. The Motion dated 24th November 2020 invites me to make orders in line with a mediation settlement agreement dated 14th October 2020, which was allegedly adopted by the court on 21st October 2020.

2. I am unable to determine the said Motion as the process that led up to the mediation settlement agreement was not placed before me. The mediation settlement agreement appears to reverse the order that Mwita J made herein on 30th November 2016, yet the reference to mediation appears to have been made in proceedings other than these, and the mediation settlement was adopted as order of the court in those other proceedings, not in the instant proceedings. I will need to see copies of the proceedings which led up to the mediation, inclusive of the order adopting the settlement. Determining the Motion without sight of those proceedings would be equivalent to acting blindly.

3. It would appear that those other proceedings were before a court with jurisdiction under Article 162(2) of the Constitution. I would have no jurisdiction, by dint of Article 165(5) of the Constitution, to intervene in proceedings that the courts envisaged in Article 162(2) of the Constitution are seized of. A mediation settlement agreement adopted by a court envisaged under Article 162(2) should, ideally, be executed through the processes of that court. What I am being invited to do is to grant orders that ought to be made by the courts envisaged in Article 162(2), and I clearly have no jurisdiction to do so, on account of Article 165(5).

4. I will make no orders on the Motion dated 24th November 2020, in the circumstances. Let it lie in abeyance, but there is liberty to apply.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28TH DAY OF

JANUARY, 2022

W. MUSYOKA

JUDGE

Mr. Erick Zalo, court assistant

Mr. Okeyo, instructed by Messrs. Okeyo Ochiel & Company Advocates, for the applicants

Ms. Omar, instructed by Ms. R. Omar & Company, Advocates, for the respondents