



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**JUDICIAL REVIEW APPLICATION NO. E001 OF 2021**

**LEVIS OKELLO.....EX PARTE APPLICANT**

**VERSUS**

**SANDRA OUMA.....1<sup>ST</sup> RESPONDENT**

**RICHARD OUMA.....2<sup>ND</sup> RESPONDENT**

**VERA OUMA ..... 3<sup>RD</sup> RESPONDENT**

**FRIDA OUMA .....4<sup>TH</sup> RESPONDENT**

**SENIOR RESIDENT MAGISTRATE MBITA LAW COURTS.....5<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. Levis Okello, the ex parte applicant moved the court under Order 53 Rule 1 (i) and Order 53 Rule 7 of the Civil Procedure Rules. He is seeking the following orders:

a) The honorable court be pleased to grant leave to the applicant to apply for an order of certiorari removing into this court for purposes of having quashed the decision of the 5<sup>th</sup> respondent made on the 10<sup>th</sup> December, 2020 by virtue of an order for costs awarded in favor of the 1<sup>st</sup> to 4<sup>th</sup> respondents in Mbita Senior Resident magistrate court Misc. Civil application no.E001 OF 2020.

b) Upon leave being granted to the applicant to apply for judicial review, such leave to operate as stay of any further proceedings in Mbita SRM MISC, Civil Application NO.E001 of 2020 and Mbita SRM SUCC.NO.57 OF 2020 respectively.

c) The costs of this application be provided for and be made payable by the 1<sup>st</sup> to 5<sup>th</sup> respondents.

2. The application is premised on the following grounds:

a) The actions of the 5<sup>th</sup> respondents are administratively in nature pursuant to the Judicature Act and other laws.

b) The excesses in terms of actions taken by the 5<sup>th</sup> respondent cannot be appealed against in light of the nature of the actions taken by the 5<sup>th</sup> respondent.

c) The orders for costs were awarded to the respondent based on bad proceedings as the subordinate court did not have jurisdiction to deal with the application that was presented before it vide Mbita SRM's court Misc. Civil Application NO.E001 of 2020.

d) The case at Mbita cited herein above was oppressive and an abuse of judicial authority by the 5<sup>th</sup> respondent.

e) It is in the interest of justice that the orders sought herein be granted.

3. The application was opposed by the 1<sup>st</sup> to 4<sup>th</sup> respondents. The 5<sup>th</sup> and the 6<sup>th</sup> respondent did not file grounds for opposition or submissions.

4. Levis Okello, the applicant is the chief Rusinga West location in Suba North Sub County of Homa Bay County.
5. The 1<sup>st</sup> to 4<sup>th</sup> respondents herein moved the Senior Resident Magistrate's court at Mbita to compel the applicant to write an introductory letter so that the 1<sup>st</sup> to 4<sup>th</sup> respondents could file a succession cause.
6. The orders were issued by the 5<sup>th</sup> respondent in favour of the 1<sup>st</sup> to 4<sup>th</sup> respondents with costs. This aggrieved the ex parte applicant who moved to this court.
7. The kind of letter of introduction the 1<sup>st</sup> to 4<sup>th</sup> respondents required to be written by the ex parte applicant was not an automatic one. Before issuing the orders in favour of the 1<sup>st</sup> to 4<sup>th</sup> respondents, the learned magistrate ought to have summoned him so that he could explain his side as to why he was not issuing the introduction letter sought. The ex parte applicant was therefore condemned unheard.
8. The application is allowed in terms of prayers 1 and 2. Costs to be borne by the 1<sup>st</sup> to the 4<sup>th</sup> respondents.

**DELIVERED AND SIGNED AT HOMA BAY THIS 16TH DAY OF DECEMBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE.**