



**IN THE HIGH COURT OF KENYA AT BUSIA**

**PROBATE & ADMINISTRATION NO. 112 OF 2010**

**IN THE ESTATE OF:**

**LAURENCE ONGOMA.....DECEASED**

**BETWEEN**

**JOHN FRANCIS MUYODI**

**PETER LUNANI ONGOMA.....CO-ADMINISTRATORS**

**AND**

**EDGAR LUNANI MUYODI**

**CYPRIANE ECHESA MUYODI.....APPLICANTS**

**RULING**

1. By an application dated 18<sup>th</sup> June 2019 by way of Notice of Motion, the applicants moved the court under Order 24 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules for the following orders:

- a) That the applicants be substituted for the deceased co-administrator John Francis Muyodi.
- b) That the costs of the application be provided for.

2. The application was premised on the following grounds:

- a) That JOHN FRANCIS MUYODI who died on 15/4/2019 was a Co-Administrator in the cause herein which is still pending.
- b) That the applicants have been issued with Letters of Administration Ad Litem for the deceased C-Administrator's estate.
- c) That it is in the interest of justice and fairness that the Orders sought be granted for the expedient disposal of this suit.

3. The application was opposed on grounds that:

- a) That the application is unmerited and untenable in view of provisions under Section 81 of the Laws of Succession Act Cap 160.
- b) That the application has been brought in bad faith and only meant to delay the finalization of this very old matter.
- c) That otherwise this application is slanderous, frivolous an abuse of court process and should not be entertained.

4. The Law of Succession Act is self-sufficient and only allows the invocation of other legal provisions in Rule 63 of the Probate and Administration Rules as follows:

**(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.**

**(2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all**

**matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.**

Order 24 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules were not imported under Rule 63 of the Probate and Administration Rules. In the case of **Priscilla Vugutsa Kamaliki vs. Mary Runyanyi Ochieng [2016] eKLR** judge Ruth Nekoye Sitati was confronted by a similar scenario and this is what she said:

**The first issue for this Court to determine is whether the instant application is properly before the Court. The application is expressed to be brought under Section 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act Order 40 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules. It is worth noting that the Law of Succession Act is a self-contained Act and provisions of the Civil Procedure Act, unless specifically imported into it are not applicable. A look at Rule 63 of the Law of Succession Act reveals that the provisions under which the present application is brought are not some of the provisions imported into the Law of Succession Act. What this means therefore is that the instant application is incompetent for want of form and is therefore fit for striking out.**

This being the case in the present application, it will suffer the same fate.

5. The application is therefore struck out for being incompetent.

**DELIVERED AND SIGNED AT BUSIA THIS 12TH DAY OF MARCH, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**