



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 167 OF 1999**

**In The Matter of the Estate of M' Irura M' Mungania (Deceased)**

**SARAH KAMENWA MAGANA ..... PETITIONER/RESPONDENT**

**-VS-**

**MUKOMURIMI M'ITUARUCHIU .....OBJECTOR**

**SAMSON KIBETERU .....1<sup>ST</sup> INTERESTED PARTY**

**SILAS MURIUKI RUTER..... 2<sup>ND</sup> INTERESTED PARTY**

**KARWITHA KINAITORE..... 3<sup>RD</sup> INTERESTED PARTY**

**RULING**

[1] I am considering a Summons dated 16/06/2020 expressed to be brought under **Section 47 of the Law of Succession Act Rule 49, 63 and 73 of the Probate and Administration Rules and Article 159 of the Constitution**. The applicant seeks leave to amend the summons dated 14/01/2020 in terms of the draft amended summons annexed thereto.

[2] The grounds upon which the application is grounded are set out in the application and the supporting affidavit of Silas Muriuki Ruteere sworn on 16/06/2020. It is contended that the subject matter which this court delivered judgment upon is L. R. No. NYAKI/MUNITHU/327. Notice of Appeal and application dated 14/01/2020 seeking interim orders was filed. However, the wrong reference number was quoted in the application dated 14/01/2020. It is necessary to amend the application to reflect the correct land reference number so that the real question may be determined. The error was not intentional but one arising from the use of the computer.

[3] This application was unopposed.

[4] The subject matter of this cause is land parcel No. NYAKI/MUNITHU/327 and not L. R. NTIMA/IGOKI/3473 as was indicated in the application dated 14/01/2020. It is apparent that an error was made. The error is readily discernible. It is therefore apt to allow the amendment to enable the court determine the real issue in controversy. In such circumstances, it would be egregious and against the provisions of **Article 159 of the Constitution** to deny court's leave to amend and correct the error.

[5] Accordingly, on the basis of **Article 159 of the Constitution, Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules** I allow the application. The draft amended Summons is deemed to be duly filed subject to payment of the requisite court fee. No orders as to costs. It is so ordered.

**Dated, signed and delivered at Meru this 22<sup>nd</sup> day of September, 2020**

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**F. GIKONYO**

**JUDGE**

**Representation**

Muchiri for interested party/applicant

M/s Soy for respondent