

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

PETITION NO. 2 OF 2016

BETWEEN

NAOMI OKOTH OWUOR suing as administrator

ad Litem of the estate of

WILLIAM OWUOR OUKO (deceased) PETITIONER

AND

SAMMY TRADERS LIMITED RESPONDENT

RULING

1. The petition in this matter is the wife and administrator of the estate of William Owuor Omolo (“the deceased”) who died on 19th June 2014. She was granted letters of administration ad litem to commence these proceedings in *Homa Bay High Court Succession Cause No. 827 of 2012*.

2. The petitioner’s case outlined in the petition and the supporting affidavit sworn on 22nd January 2016 is that by an agreement dated 30th November 2010, the deceased agreed to purchase a Toyota Hiace registration No. KBN 978G from the respondent for a price of Kshs. 1,929,580/-. He completed paying the purchase price but that the vehicle logbook was not delivered to him. The petitioner through her advocate requested the respondent’s advocate to deliver up the logbook. Its advocate through the letter dated 28th January 2015, demanded an undertaking to satisfy any decrees arising from motor vehicle’s involvement in an accident. The undertaking was duly given by the petitioner’s advocate in the letter dated 4th February 2015. The petitioner avers that the respondent has despite demand failed to deliver up the logbook. The petitioner has now filed this petition alleging breach of its fundamental rights to property protected under **Article 40** of the Constitution.

3. In its response to the petition dated 6th June 2016, the respondent defends the suit on the basis that the claim is premature as letters ad litem do not confer property rights to a beneficiary of the estate and that the petitioner has filed this suit with the intention of stealing a match on the other beneficiaries of the estate. It further avers that the respondent cannot transfer the motor vehicle to a third party who lacks legal capacity to bring the claim for the subject motor vehicle.

4. Shorn of all technical objections, the factual claim is uncontested. In fact, the parties for all intents and purposes had compromised the case. By the letter dated 20th April 2015, the firm of *Otieno, Yogo and Ojuro Advocates* wrote to the petitioner’s advocates in response to the letter dated 4th February 2015 that, **“We propose that we record a consent in court to enable our client be covered.”** In my view, the respondent’s concern is to be indemnified in the event of any claims arising from accidents involved with the vehicle. The petitioner does not object to this.

5. I hold that it is the duty of this court resolve matters efficiently and effectively without undue regard to technicalities under **Article 159(2)(c)** of the Constitution. Since the parties have agreed to compromise the dispute, I order as follows;

a. The respondent shall within twenty-one (21) days of the date hereof deliver up to the petitioner

the original logbook for motor vehicle registration number KBN 978G together with the duly signed transfer form and all the necessary supporting documents.

b. Upon delivery of the documents in (a) above, the respondent shall be indemnified by Naomi Okoth Owuor and the Estate of Wiliam Owuor Omolo against all or any claims by third parties in respect of motor vehicle registration number KBN 978G.

c. There shall be no order as to costs.

DATED and DELIVERED at KISUMU this 31st day of October 2016.

D.S. MAJANJA

JUDGE

Mr Okoth instructed by G. S. Okoth and Company Advocates for the petitioner.

Mr Ojuro instructed by Otieno, Yogo, Ojuro and Company Advocates for the respondent.