



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC OS NO. E001 OF 2020

IN THE OF THE LAW OF SUCCESSION ACT CAP 160 LAWS OF KENYA

AND

IN THE MATTER OF THE KIMILILI PRINCIPAL MAGISTRATE'S COURT CITATION CAUSE NO 77 OF 2019

AND

IN THE MATTER OF THE REGISTERED LAND KNOWN AS KIMILILI/KIMILILI/6814

AND

IN THE MATTER OF THE ESTATE OF "HAMISI MUKANDA MAYEKU" – DECEASED

AND

IN THE MATTER OF THE ESTATE OF "IBRAHIM WANYONYI MUKANDA" – DECEASED

BETWEEN

MWADUM KHALAYI WANYONYI.....APPLICANT

AND

PATRICK WAMALWA MUKANDA.....RESPONDENT

R U L I N G

1. I have before me the Applicant's Originating Summons dated 28th December 2021 and premised under the provision of **Order 37** of the **Civil Procedure Rules**. I have also looked at the prayers sought therein. The Applicant is acting in person and it is not clear exactly what she is seeking from this Court.

2. I note from the annexure that there is pending before the **SENIOR PRINCIPAL MAGISTRATE'S COURT KIMILILI CITATION CASE No 77 of 2019** in which the Applicant is the **CITOR** and the Respondent is the **CITEE**. When that matter came up before **HON G. ADHIAMBO (PRINCIPAL MAGISTRATE)**, on 28th November 2019, the Magistrate gave the following directions with regard to the land parcel **NO KIMILILI/KIMILILI/6814**: -

"So far, the Citee has not given an explanation how he ended up being registered as the sole proprietor of the entire estate. It is in view of the foregoing that I order the Citee to appear before Court for purposes of making full disclosure of the shares of the estate of HAMISI MUKANDA MAYEKU and further produce the confirmation (sic) grant of estate of IBRAHIM WANYONYI MUGANDA and take probate of the said estate under the law failure to which the Citor shall be at liberty to file a suit to claim the estate of her deceased husband IBRAHIM WANYONYI MUGANDA.

In the circumstances, this matter is fixed for mention on 16.12.2019 to confirm compliance by the Citee."

3. On 16th December 2019, the Citee appeared in Court and said he did not have any document. Prior to that, however, and in response to

the citation, the cite had filed a replying affidavit on 4th September 2019 contents whereof are captured in the ruling of the **HON G. ADHIAMBO**. In paragraph 6, the Citee deponed as follows: -

6: “That he (the citee) has been and is still ready to effect transfer of the Citor’s deceased husband’s share to the widow and her children but they themselves have been and are still in – willing to meet the expenses.”

In view of the above concession as read together with the Hon. Magistrate’s directions and considering that the Applicant is a lay litigant who is clearly not in a position to appreciate the legal process and bearing in mind that the matter in the Subordinate Court is still alive, I give the following directions: -

- 1. The Originating Summons filed herein seeks orders which are essentially within the jurisdiction of the Succession Court at KIMILILI.**
- 2. The trial Magistrate at KIMILILI COURT should be able to put her foot down and follow up on her ruling and the Citee’s own concession in order to bring the dispute regarding the Citor’s share in the land parcel NO KIMILILI/KIMILILI/6814 to a conclusive end.**
- 3. This Court not being a Succession Court, has no jurisdiction to distribute the Estate of a deceased person.**
- 4. The Applicant should go back to the KIMILILI COURT on 28th February 2022 and pursue her claim in KIMILILI CASE No 77 of 2019.**
- 5. This ruling be transmitted to HON. G. ADHIAMBO (PRINCIPAL MAGISTRATE) for information and further action.**
- 6. This suit is accordingly struck out.**

BOAZ N. OLAO.

J U D G E

15TH FEBRUARY, 2022

RULING DATED, SIGNED AND DELIVERED AT BUNGOMA IN OPEN COURT THIS 15TH DAY OF FEBRUARY, 2022

APPLICANT PRESENT

COURT ASSISTANT - JOY

BOAZ N. OLAO.

J U D G E

15TH FEBRUARY 2022.