



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO.396 OF 2014

IN THE MATTER OF THE ESTATE OF IBRAHIM OSINDI ONDARI (DECEASED)

AND

EVANS NYARANGO OSINDI - 1ST CITOR/APPLICANT

JUSTUS ONGERA OMBACHI - 2ND CITOR/APPLICANT

JUSTINE MOCHACHE ORINA - 3RD CITOR/APPLICANT

VERSUS

MONICAH BINA OSINDI - CITEE

AND

MOKUA NAJUA OCHENGE - RESPONDENT

RULING

1. By an application dated 26th November 2014 filed under certificate of urgency on 28th November, 2014, the Applicant sought orders for inter alia; the eviction of the Respondent from LR. No. **WEST MUGIRANGO/BOSAMARO WEST/17**; the sentencing of the Respondent for disobedience of a court order and a finding that the Respondent had intermeddled with the deceased's property.

The Applicant's application was brought under **Section 45 and 47** of the **Law of Succession Act** and **Rules 49 and 73** of the **Probate and Administration Rules**.

2. The Respondent opposed the Applicant's said application through his replying affidavit dated 19th January 2015 in which he denied among other things, being in contempt of a court order or having intermeddled with the estate of the deceased. The Respondent further stated that he had a stake in the suit property as a bona fide purchaser.
3. The applicant's said application was on 11th June 2015, by consent, fixed for hearing on 23rd September 2015. On the said hearing date, neither the Applicant, nor his counsel on record appeared in court to prosecute the said application leading to the counsel for the Respondent's plea for the dismissal of the same with costs to the Respondent.

4. This court is satisfied that indeed, the date for the hearing of the applicant's application dated 26th November 2014 was taken by consent.
5. The absence of the Applicant and his counsel during the said hearing without any explanation leaves this court with no option but to dismiss it for want of prosecution.
6. Consequently, the application dated 26th November 2014 is hereby dismissed with costs to the Respondent.

Dated, signed and delivered in open court this 11th day of December, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- N/A for Applicant
- Nyatundo holding brief for Ayienda for Respondent
- Omwoyo: court clerk