



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. E03 OF 2020 (O.S)**

**IN THE MATTER OF THE ESTATE OF WERE OLONDE alias BUODO (DECEASED)**

**MARGARET AKINYI OLONDE.....APPLICANT**

**VERSUS**

**SILPA ANYANGO.....1<sup>ST</sup> RESPONDENT**

**ODHOK OLONDE.....2<sup>ND</sup> RESPONDENT**

**OTIENO OLONDE.....3<sup>RD</sup> RESPONDENT**

**RULING**

Margaret Akinyi Olonde has come to this court under the provisions of Order 37 rule 1 and 2, Order 40 rules 1, 2, 3 (3) 4 of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A, 63 (e) of Civil Procedure Act and Section 45 (2) (a) of the Law of Succession Act against Silpa Anyango, Odhok Olonde, Otieno Olonde for determinations of the following issues:

1. Whether it is in order for the Respondents to meddle in the estate of the deceased. Were Olonde Buodo to the exclusion of the applicant and the defendants/beneficiaries of the estate.
2. Whether the court should order that letters of administration in the estate of WERE OLONDE alias WERE OLONDE BUODO be taken out by the Applicant and/or the dependants of the deceased.
3. Whether an order of permanent injunction should be directed to the Respondents, either by themselves, their servants, agents, or anyone whomsoever or acting claiming title on their behalf from remaining in, occupying, continuing to occupy or doing any act on the land parcels know as Kisumu/Jimo East/793, Kisumu/Jimo East/1307, Kisumu/Jimo East/1232, Kisumu/Jimo east/1079, Kisumu/Jimo east/776, Kisumu/Jimo East/798, Kisumu/Jimo East/796, Nyakach/East Kabuodho/3789 pending the hearing and determination of this application.
4. Whether an order of permanent injunction should be directed to the Respondents, either by themselves, their servants, agents, or anyone whomsoever or acting claiming title on their behalf from remaining in, occupying, continuing to occupy or doing any act on the land parcels know as Kisumu/Jimo East/793, Kisumu/Jimo East/1307, Kisumu/Jimo East/1232, Kisumu/Jimo east/1079, Kisumu/Jimo east/776, Kisumu/Jimo East/798, Kisumu/Jimo East/796, Nyakach/East Kabuodho/3789 pending the hearing and determination of this suit.

The originating Summons is supported by affidavit of the applicant and the ground that the Respondents are intermeddling in the deceased's estate and even intending to sell some of the deceased's land properties. **The Respondents have taken all the land parcels belonging to the deceased making it impossible for the applicant and other dependants from using the said parcels of land thus causing the Applicants immense hardship.**

**The Respondents intend to take in their possession of the deceased's estate into their custody to the detriment of the other family members and dependants of the deceased.**

**That it is only fair that they wait until this Honourable court issue letters of administration and each dependant get what was lawfully bequeathed to them.**

**That the Applicant and the family members be bound to suffer irreparable loss if the Respondent is not barred from illegally taking over the deceased parcels of land. That it is in the interest of justice that this Application be allowed.**

Order 37 Rule 1 and 2 provides:

**“1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust; (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others; (c) the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts; (d) the payment into court of any money in the hands of the executors, administrators or trustees; (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees; (f) the approval of a sale, purchase, compromise or other transaction; (g) the determination of any question arising directly out of the administration of the estate or trust.”**

**“2. Any of the persons named in rule 1 may in like manner apply for and obtain an order for— (a) the administration of the personal estate of the deceased; (b) the administration of the real estate of the deceased; (c) the administration of the trust.”**

I have considered the Originating Summons and the relevant law and do find that the issues raised fall within the Jurisdiction of the High Court as this court does not issue letters of administration in respect of the estates of deceased persons and therefore has no jurisdiction to entertain the dispute which is basically the distribution of the estate of the deceased Were Olonde Buodo. The parties herein have not filed a succession cause in respect of the said estate. I do transfer this matter to the High Court Kisumu. Costs in the cause.

**DATED AT KISUMU THIS 24<sup>TH</sup> DAY OF MARCH, 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2019.**

**ANTONY OMBWAYO**

**JUDGE**