



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT HOMA-BAY

ELC APPEAL NO. 3 OF 2021

(FORMERLY MIGORI ELC APPEAL CASE NO 01 OF 2020)

DENNIS ODIWUOR OPIJAAPPELLANT

VERSUS

MIKE OTIENO ORANGERESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J.P Nandi (PM) in Oyugis Senior

Principal Court land case No. 16 of 2018 dated 30th December 2019).

RULING NO. 2.

1. In my ruling rendered on 22nd September 2021, I directed the Deputy Registrar of this court to urgently call for the original record and a certified copy of proceedings and determination, if any, in Oyugis Senior Principal Magistrate's Court Succession Cause number 68 of 2012 (the succession cause) within the next thirty (30) days from that date for the attention of this court before a final determination is arrived at in this appeal. This was done in the best ends of justice as indicated therein.
2. Accordingly, Oyugis Senior Principal Magistrate's Court Succession Cause the (succession cause) record has been availed herein and I have perused the same. Plainly, the succession cause is prominently captured on grounds 1, 3, 5 and 6 in the memorandum of appeal dated 5th January 2020 and filed in court on 20th January 2020 as well as in the parties respective submissions duly filed herein.
3. It is pretty clear from succession cause record/file that on 30th May 2013, when I was a magistrate, I did confirm grant of letters administration issued on 9th July 2012. Indeed, the grant is the subject of summons for revocation of grant dated 26th February 2020 and filed in court on 4th March 2020 in the succession cause and partly raised in grounds of this appeal.
4. In the foregone, it would not be in the best ends of justice as stipulated under **Article 50(1) of the Constitution of Kenya, 2010, Section 3 of the Environment and Land Court Act, 2015(2011) and Sections 1A, 1B, 3 and B of the Civil Procedure Act chapter 21 Laws of Kenya**, if I continue dealing with the present appeal. Therefore, I hereby recuse myself therefrom.
5. Thus, I order and direct as follows;
 - a) This appeal commenced by way of a memorandum of appeal dated 18th January, 2021 and filed herein on 20th January 2021 together with the original record/file of Oyugis Senior Principal Magistrate's Court Succession Cause No. 68 of 2012, be and hereby transferred to Migori Environment and Land Court for further orders and determination.
 - b) Mention before the Hon. Judge at Migori Environment and Land Court on 5th April 2021 for directions.
6. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 2ND MARCH 2022

G.M.A ONG'ONDO

JUDGE

Present:

1. Appellant-Present in person.
2. Mr. Ogari, learned counsel for the Respondent.
3. Court Assistant, Okello.