



**Opija v Orange (Environment and Land Appeal 3 of 2021)
[2022] KEELC 2750 (KLR) (2 March 2022) (Ruling)**

Neutral citation: [2022] KEELC 2750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 3 OF 2021
GMA ONGONDO, J
MARCH 2, 2022
(FORMERLY MIGORI ELC APPEAL CASE NO 01 OF 2020)**

BETWEEN

DENNIS ODIWUOR OPIJA APPELLANT

AND

MIKE OTIENO ORANGE RESPONDENT

((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

1. In my ruling rendered on September 22, 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 January 20, 2020 as well as in the parties respective submissions duly filed herein.
3. It is pretty clear from succession cause record/file that on May 30, 2013, when I was a magistrate, I did confirm grant of letters administration issued on July 9, 2012. Indeed, the grant is the subject of summons for revocation of grant dated February 26, 2020 and filed in court on March 4, 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 January 18, 2021 and filed herein on January 20, 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 April 5, 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:

Appellant-Present in person.

Mr. Ogari, learned counsel for the Respondent.

Court Assistant, Okello.

