



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

PROBATE & ADMINISTRATION NO.388 OF 2014

IN THE MATTER OF THE ESTATE OF:

MAURICE ONYANGO OJUNGA (DECEASED)

BETWEEN

JOEL OJUNGA NJORE.....1ST APPLICANT

JACKLINE ODHIAMBO ONYANGO2ND RESPONDENT

FRED OTIENO OSIDA.....3RD RESPONDENT

AND

KENNEDY ODHIAMBO ONGIDI.....RESPONDENT

RULING

1. The three applicants moved the court by way of Notice of Motion dated 15th February, 2021 under sections 3A, 6 & 80 of the Civil Procedure Act and sections 45, 70 & 93 of the Law of Succession Act. They are seeking the following orders:

- a) That this application be certified as urgent and service upon the parties be dispensed with in the first instance. [Spent]
- b) That there be a stay of proceedings in Oyugis SPM ELC case pending the hearing of the application for revocation pending in court.
- c) That costs be in the cause.

2. The application is premised on the following grounds:

- a) That the respondent have taken a date in respect of Oyugis SPM ELC case.
- b) That the applicants will be prejudiced.

3. The application was opposed on ground that there no application pending for revocation.

4. This court has no supervisory jurisdiction on ELC matters. This matter ought to have been filed in an ELC court. In the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 the court of appeal** (Nyarangi JA) held as follows:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

5. I therefore find that I lack jurisdiction to entertain this application. The same is struck out with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 14TH DAY OF JULY, 2021

KIARIE WAWERU KIARIE

JUDGE