

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 770 OF 2015

IN THE MATTER OF THE ESTATE OF PETER MACHINJI ISIAHO MUTONGOI (DECEASED)

RULING

1. The summons I am called upon to determine is dated 14th November 2019. It is brought at the instance of Simon Indoko Machinji, who I shall hereafter refer hereto as the applicant. Although the application does refer to a respondent, it does not name one in the title, but it would appear that the person being referred to as respondent is the administratrix herein, Mary Kerubo Machinji.
2. From the affidavit sworn in support of the application, no complaints are made against the administratrix. The acts that prompted the filing of the summons are attributed to one Silas Okanga, who is described as a son of the administratrix. It is not claimed that he acted on her instructions, and no proof has been attached to connect the administratrix to the said acts.
3. As the said Silas Okanga has not been named as a respondent, he was not served with the application. He has, therefore, not responded to the allegations made against him therein. As the complaints relate to him, he should have been served, so that he could respond to them. As it is, determination of this application in favour of the applicant would amount to condemning Silas Okanga unheard.
4. Since there is no evidence that the administrator was privy to what is alleged in the application, I do not find any basis for grant of the same. The parties herein should concentrate on getting the estate distributed instead of filing these applications that only serve to delay finalization of the matter. I hereby dismiss the summons dated 14th November 2019. As this is a family matter, I shall make no order as to costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 7th DAY OF FEBRUARY 2020

W. MUSYOKA

JUDGE