



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 4 OF 2019

IN THE MATTER OF THE ESTATE OF DANIEL MULWA KAVITHI (DECEASED).

JONAH KAVITHI DANIEL.....1ST PETITIONER/RESPONDENT

MAGDALENA WAYUA DANIEL.....2ND PETITIONER/RESPONDENT

-VERSUS-

JMM.....APPLICANT

RULING

1. By Amended Summons dated 9th September, 2019, the Applicant herein seeks that an order do issue directing **Old Mutual Investment Group Limited** to liquidate funds held in the joint names of **Daniel M. Kabithi** (deceased) and **Magdalena Wayua Daniel Mulwa** under nominee account number [xxxx] and give the applicant herein total sum of Kshs. 5,452,949/= for school fees and upkeep.

2. According to the applicant, she is a beneficiary of the Estate of the late **Daniel Mulwa Kavithi**, deceased being the deceased's daughter who prior to his death was maintaining and paying her school fees. She averred that she is a student at [Particulars Withheld] Aviation College pursuing a career in aviation as a pilot. It was her averment that after the death of the deceased, she lost her only way of support for school fees, rent and medical expenses as the Estate of the Deceased declined to cater for them and as a result she is on the verge of being chased away from school and her house locked for fees and rent arrears.

3. According to the applicant the deceased's estate is vast and unless the court intervenes, she will end up being chased from school and lose her right to education as she cannot wait for the Estate to be distributed for her to pay her said fees and rents. She gave a breakdown of what her requirements are which totals Kshs 5,452,949 and annexed a letter from the school in support thereof.

4. The applicant denied that the order sought amount to partial distribution of the estate as the estate has vast resources which run to hundreds of millions hence the sum sought is not a lot of money to ask for. According to her at the time of the deceased's death on 6th December, 2015 she was in form 2 in [Particulars Withheld] Girls and the deceased was solely responsible for paying her school fees since her mother is a housewife and does not have any earning.

5. It was her evidence that she joined [Particulars Withheld] College of Kenya in 2018 and studied for three months and later joined [Particulars Withheld] Aviation College where she studied Flight Operations and Dispatch for six months before joining [Particulars Withheld] Aviation in January, 2019 where she is pursuing a private pilot's licence whose fee is Kshs 5,270,949.00. According to her she stays in [Particulars Withheld] Estate in South C, Nairobi and the rents payable per month is Kshs 14,000.00 which she has not paid from July, last year hence the outstanding sum is Kshs 156,000/= as per the annexed lease agreement.

6. In response to the said application, the Respondents filed a replying affidavit sworn by **Jonah Kavithi Daniel** one of the Administrators of the estate of the deceased. According to him, this succession cause was started by citation and the parties entered into consent in citation cause Number 383 of 2016 that the 2nd Administrator and the deponent do Petition for grant of letters of administration jointly. Accordingly, succession cause Number 428 of 2016 was filed and the 2nd administrator (**Magdalene Wayua Daniel**) and the deponent were appointed as the administrators and on 10th May 2017 a grant of letters of administration intestate was issued and two administrators were appointed. The matter was then transferred to the High court by consent of the parties this court on 4th June, 2019 ordered for a substantive file to be opened for the succession cause and all the pleadings and file be placed within the succession cause.

7. In the deponent's view, this application is misconceived and in competent. According to him, granting an order for withdrawal of sums totalling to Kshs. 5,452,949 for the sole benefit of one beneficiary when the assets of the deceased have not been valued and when the grant is yet to be confirmed would amount to partial distribution of the estate since there are 11 other beneficiaries on the line of waiting. It was deposed that since the grant has already been issued to the two Administrators this application can only be made against the two Administrators in respect to the estate herein. The deponent further lamented that the Applicant has made this application against him alone despite the fact that he is not the sole administrator of the deceased's estate and cannot be compelled alone under the provisions of the **Succession Act**.

8. It was further contended that the Application is in competent as it was filed by an Advocate who has no capacity to file the application since the firm of B.M Mungata & Co. Advocates is not the Advocate for the Applicant herein as there is no notice of appointment of advocate on record. To the deponent, the firm of B.M Mungata Advocate is only acting for the 2nd Administrator as he took over the matter from the firm of Andrew Makundi & Co. Advocates.

9. In was deposed that under section 27 of the **Law of Succession Act** the court can only exercise its discretion when there is an order sought for provision for a dependant from the estate of the deceased. In this case the Applicant has not sought for the provision from the estate of the deceased as she has only sought for an order to authorize her to withdraw funds from the accounts of the deceased. It was contended that no proof of dependency of the Applicant by the deceased has been shown and similarly, there is no evidence that the applicant was being maintained by the deceased immediately prior to his demise. In the deponent's view, it is not the mere relationship that matters but proof of dependency. In this case, however, the applicant has not provided any evidence of how the deceased maintained the Applicant and the Responsibility the deceased undertook in respect of the applicant hence there is no basis upon which this court can make a conclusive finding as to the said Applicants dependency on the deceased.

10. It was reiterated that since the Applicant has not sought for any provision from the estate of the deceased, the same might not be entertained. Further, there is no evidence before the Honourable court to show that the deceased was paying school fees for the Applicant before he died so that his death would make it impossible for the applicant to go to school.

11. The deponent denied that the applicant is a student at [Particulars Withheld] College pursuing a career in aviation as a pilot and averred that the letter exhibited is suspect in that there is no evidence at all that the Applicant is a student at [Particulars Withheld] Aviation or at what class she is in; there is no evidence of the existence of the said [Particulars Withheld] Aviation; and the said annexure is just a letter allegedly from head of operations [Particulars Withheld] Aviation by one **Abdulkadir Hassan** but there is no evidence of existence of a person by such name and whether that person works in that institution and has authority to write such a letter. It was further noted that in the said letter it indicates the costs to be required and although the Applicant prays for rent for 11 months there is nothing before this court to support the allegation of rent since there is no lease agreement or evidence that the Applicant has indeed been paying rent to anyone. There is no evidence that the deceased was paying for rent for the Applicant at the time of his death neither is there any evidence to prove that the deceased provided money for exams attachment or for education of the Applicant.

12. In the deponent's view, the Applicant in her application has just sought for authority to withdraw a total sum of Kshs. 5,452,949 from the deceased's Barclays Bank Accounts Number [xxxx] and [xxxx] and Equity Bank Account Number [xxxx] but does not indicate the purpose of the withdrawal.

13. According to the deponent, the property of a deceased person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law and such authority emanates from a grant of representation.

14. It was revealed that the 2nd Administrator filed an application under certificate of urgency on 28th March 2018 praying for funds to be released to her of Kshs. 166,000.00 from the estate to enable her meet the educational needs of her daughter and the Applicant herein was named as the said daughter. In the said application, the 2nd Administrator exhibited Fee structure from [Particulars Withheld] College of Kenya showing that **JMM** was ADM No. DEE/xxx/F/2018 praying for Kshs. 166,000.00 annually and according to the said fee structure the Applicant was to take three years from 2018 for the study. Going by the application aforesaid then the Applicant is supposed to be in year 2 of his study of [Particulars Withheld] College of Kenya. It was reiterated that the letter annexed to the application by the Applicant purportedly from [Particulars Withheld] Aviation is suspect and the deponent prayed that the court to summons the author of that letter for cross examination.

15. It was contended that looking at the two different applications from the 2nd House seeking for withdrawal of funds allegedly for educating **JMM** in two different institutions for the same course and at the same time, the same is a clear indication that this is a well-orchestrated scheme to have the 2nd House benefit from the estate at the expense of the 1st House. It was contended that had the said funds been intended for the sole benefit and education of the Applicant, the Applicant would have been candid enough to state that the funds be released directly to the school accounts and on intervals on need to need basis. In addition, the 2nd House did not inform and/ or engage the 1st House before they allegedly took the Applicant to such an expensive school requiring school fees of over Kenya Shillings Five Million. In any case, since the alleged enrolment by the Applicant to [Particulars Withheld] Aviation was done in the year 2018 long after the demise of **Daniel Mulwa Kavithi**, it has not been demonstrated that the Deceased used to or was in a position to cater for the amounts stated therein. It was the deponent's position that had the 2nd House wanted that the Applicant be educated from the proceeds of the estate, then they had a duty to inform the 1st House and the deponent so that the families would agree on the way forward. He added that the practice in court in maters similar to the one at hand is that all the beneficiaries of the estate should consent to release of funds from the estate before the confirmation is done which consent was not sought from the deponent and the other beneficiaries who are of age and none has been filed to that effect.

16. The deponent disclosed that since he has 9 brothers and sisters who are beneficiaries to this estate, the Applicant should wait for the confirmation of grant and final distribution of the estate to ensure a fair and equitable distribution of the assets of the estate to all dependents and beneficiaries so that the other beneficiaries are not unjustifiably denied their entitle from the estate. In his view, the best interest of justice in this matter would not be served by partial distribution of the estate to one beneficiary whatever his circumstance but rather to call for speedy determination on issues pending so that the grant can be confirmed with properties being distributed to all beneficiaries in

accordance with the law. In any case, this Court has not been furnished with the requisite information to enable it to comply with the guidelines to be paid regard to before granting the orders sought.

17. In a further affidavit, the deponent averred that the applicant who is the junior most member of the deceased's estate seeks to liquidate the funds which were invested by the deceased which was not intended to be liquidated anyhow by one beneficiary to the exclusion of the other 15 beneficiaries and without any evidence that the said account has that amount sought to be liquidated and leave substantial amount for the rest of the beneficiaries and the generations to come. The deponent took issue with the letter relied on by the applicant stating that there is no confirmation that the applicant reported to that institution and the fact that it was issued on a public holiday.

18. It was averred that the 2nd administrator herein, the applicant's mother is a person of means and therefore equally bears parental responsibility to the applicant and can adequately cater for her basic needs pending the finalisation of the distribution of the estate since the applicant is her only child and she is the one who protested to the confirmation of the grant.

19. The deponent therefore believed that the present application is brought in bad faith and to further delay this matter hence it is an abuse of the process of court.

20. It was submitted by the Applicant that an authorization to withdraw Kshs. 5,452,949/= would not amount to partial distribution of the estate because the **Law of Succession Act** allows and empowers the Court to make special provisions to beneficiaries whom cannot be catered for well during the administration process.

21. It was submitted that the applicant is indeed a dependant and a beneficiary of the estate not adequately provided for on intestacy hence the applicant, as defined in the act under section 29 thereof falls squarely under the category of dependants. As such, the question of dependency is an undisputed fact. Since it is not disputed that the deceased used to pay school fees for the applicant herein before his demise, it was submitted that section 27 of the Act expressly grants this Court power to hear and determine thus kind of Applications as follows;

In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.

22. It was therefore submitted that this being the case, it is clear in the law that such special provisions have been put in place to cater for the situation at hand and since the estate of the deceased is worth hundreds of millions, such a withdrawal will not substantially affect the result shares of the beneficiaries on final confirmation of grant. Secondly the other beneficiaries of the estate were well educated by the deceased before his demise. It is so unfortunate that the applicant was not lucky enough to enjoy the same privilege due to her time of birth and age. Accordingly, failure to grant these orders will deny the applicant the chance to enjoy her right to education, a right the other beneficiaries fully enjoyed before the demise of the deceased. It was her view that section 28 of the **Law of Succession Act** supports the Application by creating circumstances to be taken into account by court in making order when it states that in considering whether any order should be made under this part, and if so what order, the court shall have regard to—

(a) The nature and amount of the deceased's property;

(b) Any past, present or future capital or income from any source of the dependant;

(c) The existing and future means and needs of the dependant;

(d) Whether the deceased had made any advancement or other gift to the dependant during his lifetime;

(e) The conduct of the dependant in relation to the deceased;

(f) The situation and circumstances of the deceased's other dependants and the beneficiaries under any will;

(g) The general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

23. In support of her submissions the applicant relied on the case of **R N M vs. R M N [2017] eKLR.**

24. It was submitted that the applicant being a dependant of the Estate and the mother who is the 2nd administrator, is by all means required to act accordingly in the best interest of the child. In law, in any matter concerning a child, the best interests of the child are paramount as stated in Article 53(2) of the Constitution. She also relied on section 4(3) of the **Children Act No. 8 of 2001**. According to her the court in making an order for provision for a dependant has the full discretion to order a specific share of the estate to be given to the dependant or make such other provision by way of periodical payment or a lump sum and to impose such conditions as the court thinks fit.

25. Regarding the contention by the Respondents that a similar application was filed by the applicant, it was averred that the said application never proceeded to hearing as the Applicant was forced to drop out of the school owing to its registration issues with its regulator. As such, the Applicant has never benefited from the Estate based on the alleged Application. In her view, it is very unfortunate that the respondent would insinuate that the applicant is trying to benefit more than other beneficiaries from the estate of the deceased by seeking orders to have access to money for school fees and rent when the respondent is well aware that the said application was withdrawn and as such it never proceeded for hearing.

26. It was submitted that the said provisions of the law do not envisage consent from beneficiaries before the Court can invoke its powers. The law was drafted in a way that in special circumstances such as the one before you, such a consent is immaterial as the court has complete discretion to make such orders as provided in section 27 of the **Law of Succession Act**. Reliance for this position was placed on the case of **Lucy Wambeti Bedan vs. James Njue Cindano [2015] eKLR**.

27. It was submitted that upon receiving instructions from the applicant to take over from the former advocate, a notice of change of advocate was diligently filed on 22nd January 2019 dated on the same date and was served upon the advocate for the respondent on 27th February 2019 hence the Advocates are properly on record.

28. On behalf of the Respondents it was submitted that the Applicant has brought the present summons through the firm of B.M Mungata Advocate, a firm which is only on record for the 2nd Administrator without a notice of appointment hence the summons are a non- starter, incompetent and void *ab initio* since they have been filed by an Advocate who has no capacity to file the application. It was submitted that the Applicant is neither an Administrator of the estate of the deceased and neither has she sought the orders herein through any of the Administrators. To the Respondents, the property of a deceased person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law and such authority emanates from a grant of representation.

29. While reiterating that fact that there was a previous application on behalf of **JMM** (the Applicant herein) praying for funds to be released to enable her meet the educational needs of her daughter who was allegedly enrolled in [Particulars Withheld] College of Kenya, it the Applicant (whether by herself or as a proxy) is on a mission and there is a well-orchestrated scheme and with an ill motive of depleting the funds left by the deceased for her sole benefit and to the exclusion of the other beneficiaries especially from the first house. In addition, the above is a clear indication that the Applicant is on a fishing expedition. She is neither here nor there but rather her endless applications are just meant to frustrate and or delay the equitable distribution of the estate of the deceased. Further, though the Applicant alleges that the previous application never proceeded for hearing, the same was never withdrawn and it is still pending before this Court. It was therefore submitted that the present summons as amended on 9th September 2019 is an abuse of the process of this Honourable Court.

30. According to the Respondent, a clear reading of sections 26,27 & 28 of the **Law of Succession Act** confirm that under section 27 of the Law of Succession Act the court can only exercise its discretion when there is an order sought for provisions for a dependant from the estate of the deceased, yet the Applicant herein has not sought for the provision from the estate of the deceased but she only seeks for an order directing funds to be liquidated and she be given Kshs. 5,452,949/= for school fees and upkeep. It was therefore submitted that the amended summons is mis-conceived and incompetent. In this regard the Respondent relied on the case of **R N M vs. R M N [2017] eKLR** and submitted that going by the provisions of section 28 of the Act, it is crystal clear that the Applicant has the onus of furnishing the court with detailed information with regard to the estate of the deceased which information serve as guideline to be paid regard to before granting the orders sought. However, since the applicant has not complied with express provisions of law, this Honourable Court cannot issue the orders sought.

31. While reiterating the contents of the replying affidavit, it was relied on the case of **M W vs. P N M & H T K [2017] eKLR** where court noted that:-

“There is no evidence before me to show that the deceased was paying school fees for the minor before she died, so that her death would make it impossible for the child to go to school. Secondly, what was placed before the court is fee structure from ‘O’ Primary School, and a demand notice for arrears of school fees but no evidence at all that this minor is a pupil at ‘O’ Primary School or what class she is in. There is nothing before this court to support the prayer for rent. There is no lease agreement or evidence that the applicant has indeed been paying rent to anyone. I have also no evidence before me that the deceased was paying rent, electricity and water for the applicant at the time of her death. Neither has any evidence been placed before me that she provided money for food and daily general upkeep for the child.”

32. Regarding lack of consent the Respondent cited **In Re Estate of M'mumuu Metaya (Deceased) [2009] eKLR** where court in declining to grant an application similar to the one at hand noted that :-

“The applicant has failed to show a ground which would cause this court to grant the orders that are sought. In addition, the beneficiaries who all are of age have not consented to the orders that are sought. For that reason, the summons dated 12th October 2009 is hereby dismissed with no orders as to costs.”

33. It was submitted that granting an order to liquidate funds and give the Applicant herein total sum of Kshs. 5,452,949/= for her sole benefit of one beneficiary when the assets of the deceased have not been ascertained and/ or valued and when the grant is yet to be confirmed would amount to partial distribution of the estate since there are 11 other beneficiaries on the line of waiting. According to the Respondent, he equally has brothers and sisters who are nine in number and who are beneficiaries to this estate. Therefore, the Applicant should wait for the confirmation of grant and final distribution of the estate to ensure a fair and equitable distribution of the assets of the estate to all dependents and beneficiaries so that the other beneficiaries are not unjustifiably denied their entitlement from the estate. It was accordingly submitted that the best interest of justice in this matter would not be served by partial distribution of the estate to one beneficiary whatever her circumstance but rather to call for speedy determination on issues pending so that the grant can be confirmed with properties being distributed to all beneficiaries in accordance with the law. The Respondent relied on **In re Estate of Gerishon Kamau Kirima (Deceased) [2015] eKLR**.

Determination

34. I have considered the instant application which is premised on section 26 of the **Law of Succession Act** which provides as follows:

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the

deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

35. From the above section it is clear that an application thereunder can be made by or on behalf of a dependant. It follows that the contention by the Respondent that the application ought to have been made by an administrator is incorrect. The section applies where the will, gift or law or combination of all the three does not make reasonable provision for a particular dependant. The order that the court is then required to make is for such reasonable provision as it thinks fit for that dependant out of the deceased's net estate. Pursuant to the said provision the court may in its discretion under section 27 of the Act order a specific share of the estate to be given to the dependant, or to make such other provision for him or her by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit. However, before doing so the court must make a specific finding that the will, gift or law or combination of all the three does not make reasonable provision for the particular dependant.

36. In determining whether or not that is the position, the court is required under section 28 of the Act to consider the following:

(a) The nature and amount of the deceased's property;

(b) Any past, present or future capital or income from any source of the dependant;

(c) The existing and future means and needs of the dependant;

(d) Whether the deceased had made any advancement or other gift to the dependant during his lifetime;

(e) The conduct of the dependant in relation to the deceased;

(f) The situation and circumstances of the deceased's other dependants and the beneficiaries under any will;

(g) The general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

37. It was therefore upon the applicant to satisfy the court that the provisions of the **Law of Succession Act**, which is the relevant law in intestate succession, does not make reasonable provision for her. That is why the law requires the court to consider the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant. It is only after that that the court may proceed to order for either lump sum payment of periodical payments. Apart from that the applicant was required to present before the Court evidence showing the nature and amount of the deceased's property. The value of estate is indicated in the affidavit in support of the petition signed by both the administrators one of whom is the mother of the applicant as Kshs 20,000,000.00. The amount sought by the applicant herein is one quarter of the said amount. In this case, the court is required as a matter of law to also consider the situation and circumstances of the deceased's other dependants and the beneficiaries. Unfortunately, the evidence before me does not sufficiently bring out this particular aspect.

38. In order to determine whether or not reasonable provision has been made to a dependant I agree with the decision in the case of **R N M vs. R M N [2017] eKLR** that:-

"Proof of dependency is thus a condition precedent to the exercise of the discretion in section 29(b) cited hereinabove. In addition, while considering the meaning of a dependant under section 29 of the Act, the court held as follows in the case of Beatrice Ciamutua Rugamba .v. Fredrick Nkari Mutegi & Others, Chuka Succ. Cause No. 12 of 2016 :-

"From the foregoing, a dependent under section 29 (b) and (c) must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency."

I note in this regard that the Applicant did in her affidavits admit that the subject children were not the Deceased's biological children, and did not provide any additional evidence of how the Deceased maintained the children, and the responsibility he undertook with respect to the said children. This Court cannot in the circumstances make any conclusive findings as to the said children's dependency on the Deceased at this stage, which finding will have to await the confirmation proceedings."

39. It is however clear that such proof is only required where the applicant falls within the category contemplated in section 29(b) of the Act and these are the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death. Accordingly, the authority is not relevant where the claimant falls under section 29(a) of the Act and these are the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death. The applicant herein being a daughter of the deceased does not therefore have to prove dependency. In other words the dependency of the applicant to the deceased is presumed by the law. In the same vein the decision in the case of **M W vs. P N M & H T K [2017] eKLR** is distinguishable from this case.

40. Regarding lack of consent of the Respondent, my reading of sections 26, 27 and 28 of the said Act reveals that the court has discretion to decide whether or not to make such provision. My take of the decision in **In Re Estate of M'mumuu Metaya (Deceased) [2009] eKLR** is that one of the factors that the court may take into consideration is whether or not the other beneficiaries have consented to the orders sought. However, that consent cannot be a condition precedent to the making of such an order otherwise, it would mean that the court's discretion

would be fettered by lack of consent. Accordingly lack of consent of the other beneficiaries is not necessarily fatal to the grant of the orders sought.

41. However, unless an applicant complies with the above provisions, it would be premature to seek an order for the release of certain sums forming part of the estate to one or some of the beneficiaries since to do so may well amount to partial distribution thereof. I therefore agree with the decision in the case of **M W vs. P N M & H T K 2017** (supra) that :-

“...this rush to cash out the minor’s entitlement is not in her best interests. The best interests of the child will be served through the conclusion of the succession cause, as required by section 82(d) of the Law of Succession Act, confirmation of the grant and the determination of what the child is entitled to, which will definitely include what the applicant is entitled to, if at all, and what the respondents are entitled to. The mix up in the application before me can only be to the detriment of the interests of the child. In the meantime, I need to remind the applicant that the child has the right to parental responsibility as per article 53(1) (e) of the Constitution which provides that both the mother and father have the duty to fulfil this right. Upon the death of the father this responsibility remains with the mother. She retains the parental responsibility for the child and is expected to make decisions that are in the best interests of the child.

42. Partial distribution unless consented to was rightly declined by the court in **In re Estate of Gerishon Kamau Kirima (Deceased) [2015] eKLR** where it was noted *inter alia* that;-

“I am therefore of the view that Mr.Wanjau is only entitled to the payments that were consented upon by all the beneficiaries and the interests of justice cannot be served by partial distribution of the estate to one beneficiary whatever his circumstances, unless the beneficiaries consent, as they have previously done, to such partial distribution.”

43. Therefore, in the absence of satisfaction of the conditions stipulated in section 26 of the **Law of Succession Act**, a release of monies or properties forming part of the estate of a deceased person pending confirmation of the grant, which amounts to partial distribution as opposed to making reasonable provision, can only be with consent of the beneficiaries.

44. I am not satisfied that the provisions of section 26 aforesaid have been satisfied or complied with. In the premises, the amended summons dated 9th September, 2019 fails and is dismissed but with no order as to costs.

45. It is so ordered.

Ruling read, signed and delivered in open Court at Machakos this 9th day of December, 2019.

G. V. ODUNGA

JUDGE

In the presence of:

Mr Munyao for the Applicant

CA Geoffrey