



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**SUCCESSION CAUSE NO.248 OF 2013**

**IN THE MATTER OF THE ESTATE OF NYANGAU ONYARI – DECEASED**

**AND**

**PRISCA NYARESO OKINYI.....PETITIONER**

**VERSUS**

**JUSTUS A. M. SIGAH.....OBJECTOR**

**COUNTY GOVERNMENT OF NYAMIRA .....APPLICANT/PROPOSED  
INTERESTED PARTY**

**RULING**

1. The application is dated 6<sup>th</sup> February 2015. It seeks the following orders:
  - a. **This application be certified urgent and the same be heard on priority basis.**
  - b. **Leave be granted to the applicant to be joined in these proceedings as an interested party and be granted the liberty to participate in these proceedings by virtue of being registered proprietor of L.R. NO. EAST KITUTU/MWAMOSIOMA/545 the suit land herein.**
  - c. **Consequent to prayer No.2 hereinabove being granted leave be granted to the applicant to file a Replying Affidavit and/or grounds of opposition to the application herein within such time as the court will determine.**
  - d. **Such orders and/or directions as the Honourable Court deems just be made.**
  - e. **The costs of this application be costs in the cause.**

Based on the following grounds:

- a. **This suit relates to land parcel known as L.R. NO. EAST KITUTU/MWAMOSIOMA/545 (hereinafter called Suitland).**
- b. **The applicant herein is the registered owner of the suit land.**
- c. **Any order and/or judgment or ruling made herein will affect and/or prejudice the applicant's interests in the suit land.**

- d. **Consequently, the application is likely to be condemned unheard.**
  - e. **The applicant stands to suffer substantial loss unless the orders sought are granted.**
  - f. **No prejudice will be occasioned to the parties if the orders sought herein are granted.**
  - g. **In order to solve all the matters in controversy herein, it is necessary to enjoin the applicant as a party in these proceedings.**
  - h. **It is in the interest of justice that this application be allowed.**
2. The supporting affidavit is sworn by one Eric Onchana Aori, the County Secretary of the County Government of Nyamira. Essentially the applicant, seeks to be enjoined on this suit, Succession Cause No.248 of 2013.

The dispute between the Petitioner and the objector would affect the applicant, as:

- a. **He is the registered owner of the land known as EAST KITUTU/MWAMANGERA/545.**
  - b. **The applicant stands to suffer substantial loss unless the orders sought are granted.**
  - c. **No prejudice will be occasioned to the parties if the orders sought are granted.**
  - d. **To solve all the matters pertaining of this plot, it is necessary to enjoin the applicant as a party in the proceedings.**
3. I have read the submissions of Mr. Soire for the objector. He avers that by the applicant coming through the Civil Procedure, have made the application incurably defective.

The court agrees that this would have been the position prior to 27<sup>th</sup> August 2010 – before the promulgation of the Kenyan Constitution.

- i. **Article 40 of this Constitution decrees as follows: protection of right to property, subject to Article 65, every person has a right, either individually or in association with others, to acquire and own property - :**
  - a. *of any description; and*
  - b. *in any part of Kenya*

**This right is part of the Bill of Rights.**

**And under the Constitution, every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of rights has been denied, violated or infringed, or is threatened, see Art.22(1) of the Constitution.**

- ii) **Article 22 (3) (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal document and;**
  - c. *No fee may be charged for commencing the proceedings.*
  - d. *The court, while observing the rules of natural justice, shall not be immeasurably restricted by procedural technicalities.*
- iii) **Article 159 (2) overlooks technicalities in the process of prosecuting civil matters.**

**The right the proposed interested party is fighting for is a right that appertains to the ownership of the property under article 40 of the Constitution. The procedural technicalities are unnecessary. The constitution envisages even informal procedure in pursuit of any right under the Bill of Rights.**

**iv) Fortunately, counsel for the petitioner is not opposed to the interested party application.**

4. Accordingly, the application dated 6<sup>th</sup> February 2015 is hereby allowed especially orders 2 thereof.
5. Consequently, the applicant is hereby given (14) days to file a replying affidavit and/or grounds of opposition, if any.
6. It is so ordered.

**Dated, signed and delivered at Kisii this 17<sup>th</sup> day of July, 2015**

**HON. C. B. NAGILLAH**

**JUDGE**

**In the presence of:**

- M/S Obuocha for Petitioner.
- M/S Soire for Objector
- M/S Asati for Interested Party/Applicant
- Mr. Samuel Omuga: Court Clerk