



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 177 OF 2017

JOSEPH OSUNDWAPLAINTIFF

VERSUS

KUNANI WAKUNGWI ALIAS MWANASHA

KUNANI WAKUNGWI

ASMAN OSUNDWA AKUNGWIDEFENDANTS

AND

SIMAEEL WESONGA ESHIRERE

MOHAMED OMAR

PATRICK WASWA OTIPAINTERESTED PARTIES

AND

JUSTINE OTIPA OFISIAPPLICANT

RULING

The application is dated 24th February 2020 and seeks the following orders;

1. That the applicant be granted powers/authority to pursue the matter before the honourable to replace his father due to sickness and old age.
2. That also the plaintiff has lost sight of his eyes and sense of hearing due to several operations done to him.
3. That there be an order on costs.

It is based on the grounds that the cause of action revolves around determination of interests in land No. East Wanga/Eluche/808. That the plaintiff herein Joseph Osundwa Otipa is aged above 70 years and he intends to replace his son one Justine Otipa Ofisi to act for him. That land matters are emotive and ought to be determined on merit. That the plaintiff in this suit be replaced by his son one Justine Otipa Ofisi. That the matter is scheduled for hearing on 10th March, 2020 and hence need to be replaced immediately. That the applicant is willing to abide by any conditions as may be put by the court.

The defendants/respondents opposed the application dated 24th February, 2020 on the following main ground that there is no evidence documentary or otherwise to support the allegation that Joseph Osundwa Otipa the plaintiff is sick, has lost eyes, sense, is old inter alia. That the application is an abuse of the court process. That the application lacks merit.

This court has considered the application and the submissions therein. The application is based on the grounds that the plaintiff herein Joseph Osundwa Otipa is aged above 70 years and sick and he intends to replace his son one Justine Otipa Ofisi to act for him. That land matters are emotive and ought to be determined on merit. That the plaintiff in this suit be replaced by his son one Justine Otipa Ofisi. I concur with the submissions by the respondents that no evidence documentary or otherwise to support the allegation that Joseph Osundwa Otipa the plaintiff is sick. The applicant should file a power of attorney if he wishes to substitute the plaintiff. I find this application has no merit and I dismiss

it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 26TH OCTOBER 2020.

N.A. MATHEKA

JUDGE