



**REPUBLIC OF KENYA**

**IN THE KADHI'S COURT AT KISUMU.**

**SUCC CAUSE NO 36 OF 2014**

**IN THE MATTER OF THE ESTATE OF HAWA ABDI.....DECEASED**

**AND**

**IN THE MATTER OF AN APPLICATION BY ;**

**MURSAL ADAN ALI.....APPLICANT/RESPONDENT.**

**VERSUS**

**KASSIM MOHAMMED.....1ST RESPONDENT/PETITIONER**

**BISHAR ADAN ALL.....2ND RESPONDENT/PETITIONER**

**RULING**

The applicant herein **MURSAL ADAN ALI** through his Notice of motion dated 9th April 2015 prayed for;

- 1-the application to be certified as urgent.
- 2- Leave to file an application to the high court.
- 3-that the succession case no 36 of 2014 before this court be stayed and the same be transferred to Nairobi Kadhi's court for fresh hearing.

**His grounds being that;-**

- 1-He is a student and is going back to school today.
- 2- That the Respondent/petitioner did not serve him and his fellow respondents with any summons or proceedings and this, according to him is contrary to the civil procedure.
- 3- That the suit has been filed in a wrong court as the matter arose in Kapsabet.

During the hearing of the application the applicant claimed that despite him filing a preliminary objection and notice of withdrawal, that this court went ahead and heard the matter disregarding all the documents filed by them. He quoted verse no 25 in Surat NUR of the holy qur'an and claimed that a judicial officer intruded his house without his approval. The applicant did not disclose the judicial officer nor the place of intrusion, and the therefore the verse he quoted is irrelevant.

After perusing the application and hearing the applicant, and after looking at the documents filed, it is clear to this court that the applicant and other respondents in the petition were well served by a court process server on the 22nd day of December 2015 and the affidavit of service is filed herein.

It is also evident that the applicant and his fellow respondents in the petition already entered appearance and filed a joint defiance. This is a clear indication that they received the summons but refused to come for hearing. It is also noted that the 1st petitioner is appearing as a respondent and it is unprocedural.

During hearing of his application the applicant confessed that he spent over sh.25,000/= to carry his family to Kisumu. This court believes

that they travelled to file a defence after receiving the summons..The applicant and his fellow respondents were supposed to file a preliminary objection and not a defiance. The first respondent also filed a notice of withdrawal of a case which is not his, and this is unprecedental. The respondents actions including their refusal to attend court are an abuse of the court process and this cannot make proceedings be stayed.. The petitioner/respondent-Kassim Mohammed swore an affidavit expressing his fear of not getting justice in Eldoret court because the respondents had a great influence in the Eldoret court and that he wanted a neutral ground for justice to be seen to be done.

With the above reasons it is the finding of this court that the applicant has no bases to seek leave or stay and that his action is aimed at derailing this matter further. I therefore decline to give leave or stay the proceedings and advise the applicant/Respondents to appear before this court on the 20th day of April 2015 for inter-parte hearing.

R/A-30 days.

Delivered in court on the 8th day of April 2015 in the presence of

**Mursal.M.Sizi-Kadhi**

applicant/respondent-Mursal Adan Ali

Court Assistant-Rehema Akidah