

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE NO. 393 OF 2011

**IN THE MATTER OF THE ESTATE OF JOHN SIMIYU
MUSAWA (DECEASED)**

AND

**MURIKA SIMIYU MUSAWA.....1ST
APPLICANT/BENEFICIARY**

**BRIGID NAMALWA SIMIYU.....2ND
APPLICANT/BENEFICIARY**

**LILIAN NASIPWONDI SIMIYU.....3RD
APPLICANT/BENEFICIARY**

VERSUS

**ARNEST MUSAWA
SIMIYU.....ADMINISTRATOR/BENEFICIARY**

RULING

1. On 11.11.2025 the beneficiaries/Applicants moved this court vide a Notice of Motion dated 10.11.2025 filed under a certificate of urgency. I duly considered the same and directed that the same be served within 3 days and responses be filed within 7 days and then scheduled the applicant for inter parties hearing today.

2. Mr. Kituyi for the objector has submitted that he was not served save that he encountered this matter in today's cause list. He prays that he be served and any interim orders be vacated.
3. Mr. Onkangi who is holding brief for Mr. Kaptain for the Applicants has submitted on rejoinder that the omission by Mr. Kaptain to effect service upon Mr. Kituyi was inadvertent and that if the interim orders are vacated then the substratum of the application will disparte.
4. I have considered the rival submissions of parties within the backdrop of the fact that on 11.11.2025 I had certified this application as urgent and granted the applicants interim orders. It is surprising that the Applicants who are enjoying the interim orders opted not to comply with the other orders of the court as regard service. The rejoinder by Mr. Onkangi has no factual basis. The certification of the Applicant's application as urgent puts a limited time frame of 60 days upon this court to hear and determine the application yet the Applicants have now started to employ procrastination tactics. I will not condone such conduct on their part.
I thus make the following orders.

- i. The orders made herein on 11.11.2025 certifying the Applicant's Notice of Motion dated 10.11.2025 as urgent and the interim orders of injunction are hereby vacated due non - compliance with the directions on service.
- ii. The Applicants are directed to serve their application upon all parties responses within 3 days and responses be filed within 10 days from the date hereof.
- iii. The Applicant's to file and serve their submissions within 20 days and the Respondents to do so within 30 days from the date hereof.
- iv. Mention on 2.2.2026 for compliance

Delivered, signed, and dated at Bungoma this 20th day of November, 2025.

MWANAISHA S. SHARIFF
JUDGE