



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 233 OF 2015**

**FLORENCE VUTANGWA MUHONGA .....PLAINTIFF**

**VERSUS**

**ANDREW ANDABWA MAKOKHA**

**JACKTON HANNINGTON NANDI .....DEFENDANTS**

**RULING**

The preliminary objection filed by the defendants herein dated 30<sup>th</sup> January 2018 is on the plaintiff's capacity to institute this suit. The reason being that succession proceedings have not been carried out to appoint administrators of the estate of the late Ezekiel Muhonga Meyi who was the husband of the plaintiff. Therefore the only question for determination before me is whether the plaintiff has capacity to institute the suit herein as against the defendants.

The plaintiff submitted that, she is the absolute registered proprietor of all that parcel known as Butso/so/shikoti/2853 measuring 0.69 Ha having been registered as such on 23<sup>rd</sup> October, 2000 a copy of the title deed which is in the plaintiffs name was filed herein among the plaintiff's documents. The plaintiff's clean title now of seventeen good years has never been challenged nor questioned and she has had continuous occupation and quiet user of the said property without interference until the date of the suit hereof against the defendants. It is their submission that indeed at the time of such purchase of the suit land the same was done at the time her late husband Ezekiel Muhonga Meyi was then alive and same was acquired jointly. Upon the plaintiffs husband demise the vendor agreed and to rightfully transferred the said land to her hence the current title deed in her name. The plaintiff holds a good, clean and valid title to the suit property herein and does not need to take out letters of administration in respect of her late husband to institute any legal proceedings against the defendants herein or any other person offending her legal rights over the suit land.

This court has considered the preliminary objection and the submissions herein. I have perused the plaint filed in court on the 24<sup>th</sup> August 2015. It is clear that the plaintiff is suing on her own behalf and avers that the suit land is registered in her name. I find this preliminary objection is not merited and I dismiss the same with costs.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 7<sup>TH</sup> DAY OF MAY 2019.**

**N.A. MATHEKA**

**JUDGE**