



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC NO. 735 OF 2017(o.s)

(Formerly KISII ELC CASE 415 OF 2015)

ALFRED OBUYA OMOLLOSuing as the Legal Administrator of the of the Estate of **DALMAS AMOLO OWINO,DECEASED**.....**PLAINTIFF/APPLICANT**

VERSUS

JOSEPH OLOO AKAL.....**DEFENDANT/RESPONDENT**

RULING

1. This ruling relates to a Notice of Motion dated 26/9/2017 brought under Order 37 Rules 16 & 18 of the Civil Procedure Rules, 2010 and Sections 1A, B & 3A of the Civil Procedure Act and All enabling laws. The Applicant/Plaintiff seek the following orders;-

1. THAT the Honourable Court be pleased to give appropriate and/or suitable Directions as to the manner in which the instant matter should proceed.

2. THAT the Honourable court be pleased to direct and/or that he Originating Summons, together with the Supporting Affidavit, be deemed as the Plaint,whilst on the other hand, the Replying Affidavit, if any, to the Originating Summons, be deemed as he statement of defence.

3. Consequent to prayer 2 hereinabove, the Honorable Court be pleaded to direct and/or Order that the Originating Summons herein, be heard and disposed of, by way of Viva voce evidence.

4. The Honourable court be pleased to direct and/or order the parties to file and exchange their respective witness statements, bundle of documents and such other necessary documents, in compliance with Order 3 Rule 2 & 7 Rule 5 of the Civil Procedure Rules, 2010.

5. Costs of this application do abide the cause.

6. Such further and/or other orders be made as the court may deem fit and expedient.

2. Ms. Mireri counsel for the Plaintiff/Applicant request the Court to grant the orders as prayed therein.

3. The Defendant appearing in person has no objection to the grant of orders sin the Notice of Motion. He concurs with the prayer.

4. I accordingly allow orders 2 to 5 sought in the Notice of Motion.

5. I direct and order that the parties file and serve documents and or exchange their documents within 30 days from the date hereof.

6. Hearing of the suit by viva voce evidence be on 23/4/2018.

7. Orders accordingly

DELIVERED, SIGNED and DATED in open court at MIGORI this 18th day of JANUARY 2018.

G.M.A. ONGONDO

JUDGE

In presence of :-

Mr. Mireri counsel for the Plaintiff/Applicant

Joseph Oloo Akal in person

Tom Maurice – Court Assistant

G.M.A. ONGONDO

JUDGE