



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 280 OF 2017**

**SAHNKATI OLE MENYIKU(Suing As The Legal Rep  
of JOSEPH OOBO SHANKOI).....PLAINTIFF**

**-VERSUS-**

**EVERYNE CHEPKURU KORIR.....1<sup>ST</sup> DEFENDANT**

**LEITATO OLE MOMBASHI.....2<sup>ND</sup> DEFENDANT**

**LETUI LEMPERE.....3<sup>RD</sup> DEFENDANT**

**STEPHEN KASI.....4<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff/Applicant has by way of a Notice of Motion dated 13<sup>th</sup> February 2017 sought for orders that the court enters judgement for recovery of land parcel Number **TRANS MARA/ MOITA/125** the said Application was based on the grounds that the Respondents were trespassers within the meaning of section 45 of the law of succession Act. The Respondents have entered appearance and not filed a defence and that the defendants have wrongfully and unlawfully occupied the aforesaid parcel of land. The Application was further supported by the Affidavit of the Applicant who averred that he was the legal representative of the estate of **JOSEPH OOBO SHANKOI** and that the suit land was registered in the name of the deceased. He states that the Respondents had trespassed on the suit land without authority and further that they entered into a sale agreement without the grant of letters of administration.

The Respondent had opposed the said application by way of a Replying Affidavit that was sworn by the 2<sup>nd</sup> Respondent on her own behalf and her co-Respondents/Defendants.

The Respondent depones that she is the legal wife of **JOSEPH OOBO SHANKOI** who is deceased and that her late husband was the registered owner of the suit parcel of land **TRANS MARA/MOITA 125** and that the Applicant is her brother in law who wants to disinherit her and she has been chased away by the Applicant and has been rendered destitute.

I have read the application before me and the Replying Affidavit in opposition to the said application. I have also heard submissions made by counsels appearing for the parties herein and the issue for determination before me is whether I should enter Judgement for the Applicant based on the fact that the Defendant didn't file their defence on time.

In answering the above question I must satisfy myself on whether there is a defence on record or not. In

answering the same I have seen that there is a defence that was field on 3<sup>rd</sup> July, 2017. This being the case I don't see how I can enter judgement. The Applicant has not challenged the said defence as being a sham as one that only contains mere denials.

I also note that the parties to the suit are all related to the late **JOSEPH OOBO SHANKOI** who is deceased and was the owner of the suit land. It will be prudent that this matter do benefit from the conduct of a full hearing in which evidence will be called and witness testimony is heard and the court pronounces itself on the issues in the matter.

In view of the above the Application dated 13<sup>th</sup> February, 2017 is hereby denied. Each party to bear its costs.

**Dated, Signed and Delivered** in open court at **NAROK** on this 3<sup>rd</sup> day of **November, 2017**

**Mohammed Noor Kullow**

**Judge**

In the presence of:

N/A for the parties

CA:Chuma