



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT HOMA BAY**

**ELC OS 17 OF 2021**

**(FORMERLY MIGORI ELC OS E009 OF 2020)**

**IN THE MATTER OF: LIMITATION OF ACTIONS ACT CAP 22**

**AND**

**IN THE MATTER OF: A CALIM FOR ADVERSE POSSESSION**

**PURSUANT TO SECTION 38 OF LIMITATIONS OF ACTIONS ACT**

**AND**

**IN THE MATTER OF: LR NO. KANYADA/KANYABALA/3646 AND 3647**

**ISHMAEL OWANO OWAYA.....PLAINTIFF**

**VERSUS**

**LONAH BOL OKUR.....1<sup>ST</sup> DEFENDANT**

**CLIFF ORIWO OKURO.....2<sup>ND</sup> DEFENDANT**

**RULING NO. 1**

1. The instant ruling is rendered worthwhile before the determinative or final judgment in this suit. Indeed, in **The Black's Law Dictionary 10<sup>th</sup> Edition at page 971**, the term "**Final judgment**" means

*"A court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes attorney fees) and enforcement of the judgment---Also termed final appealable judgment, final decision, final decree, definitive judgment, determinative judgment, final appealable order."*

2. It is noteworthy that the plaintiff, Ishmael Owano Owaya previously represented by the firm of Ochoki and Company Advocates and currently by the firm of O.H Bunde and Company Advocates pursuant to the notice of change of Advocates dated 14<sup>th</sup> October 2021, mounted this suit by way of an Originating Summons dated 26<sup>th</sup> October 2020 and filed herein on 27<sup>th</sup> October 2020. He claims to have acquired title over a portion of Land Reference Numbers Kanyada/Kanyabala/3646 and 3647 (the suit parcels of land) which are sub divisions of LR Number Kanyada/Kanyabala/1013 measuring approximately Twelve Decimal Six hectares (12.6Ha) in area (The original land), by way of prescription or adverse possession.

3. The defendants, Lorna Bol Okuro and Cliff Oriwo Okuro represented by the firm James Nyakundi and Company Advocates, opposed the Originating Summons by way of a replying affidavit sworn on 21<sup>st</sup> January 2021 and filed in court on 25<sup>th</sup> January 2021. They termed the suit devoid of merit and a waste of the court's time, among other things.

4. At paragraphs 2, 3, 4 and 5 of the plaintiff's affidavit in support of the Originating Summons, it is deposed that the original land was registered in the name of Christopher Okuro Aruji (Deceased). That the grant of letters of administration in respect of the estate of the Deceased were confirmed on 15<sup>th</sup> December 2015 in Homa Bay High Court Succession Cause number 698 of 2014. That the plaintiff filed summons for revocation of the grant but the same was not determined as the High Court referred the matter to this court for hearing and determination.

5. Paragraphs 2, 4, 5, 6, 7, 8 and 10 of the 1<sup>st</sup> defendant's replying affidavit speak to the existence of the succession cause as pointed out in paragraph 4 hereinabove. That there are subsisting orders in the succession cause. That an attempt by the plaintiff to have ownership of the suit parcels of land would jeopardize the beneficiaries of the estate of the deceased and contravene section 74 of the Law of Succession Act Chapter 160 Laws of Kenya.

6. It is trite law that the jurisdiction of a court or tribunal flows from either the Constitution or legislation or both; see the Supreme Court of the Republic of Kenya decision in the case of **Samwel Kamau Macharia and another-vs-Kenya Commercial Bank Limited and others (2012) eKLR**.

7. Undoubtedly, the jurisdiction of this court emanates from Article 162 (2) (b) of the Constitution of Kenya, 2010 and sections 4 and 13 of the Environment and Land Court Act, 2015 (2011); see also **Republic-vs- Karisa Chengo and 2 others (2017) eKLR**.

8. I bear in mind the foregoing and that this court has not had the advantage of perusing the record of the succession cause to arrive at an informed finding in this suit. So, pursuant to Section 3 of the Environment and Land Court Act (supra) as read with Sections 1A, 1B, 3 and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya, I order and direct thus;

a) The Deputy Registrar of this Honourable Court to call for the original record and or certified typed copies of proceedings, orders and or determination, if any, in Homa Bay High Court Succession Cause number 698 of 2014 within the next thirty (30) days from this date for perusal by this court to meet the best ends of justice.

b) Mention to confirm compliance and directions on 20<sup>th</sup> January 2022.

**DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 15TH DAY OF DECEMBER, 2021.**

**G M A ONGONDO**

**JUDGE**

Present

1. Plaintiff

2. 2<sup>nd</sup> Defendant

3. Okello, Court Assistant



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