



Case Number:	Succession Cause 396 of 2014
Date Delivered:	11 Dec 2015
Case Class:	Civil
Court:	High Court at Kisii
Case Action:	Ruling
Judge:	Wilfrida Adhiambo Okwany
Citation:	Evans Nyarango Osindi & 2 others v Monicah Bina Osindi & anothevr [2015] eKLR
Advocates:	Ayienda for Respondent
Case Summary:	-
Court Division:	Family
History Magistrates:	-
County:	Kisii
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application is dismissed with costs
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**SUCCESSION CAUSE NO.396 OF 2014**

**IN THE MATTER OF THE ESTATE OF IBRAHIM OSINDI ONDARI (DECEASED)**

**AND**

**EVANS NYARANGO OSINDI - 1<sup>ST</sup> CITOR/APPLICANT**

**JUSTUS ONGERA OMBACHI - 2<sup>ND</sup> CITOR/APPLICANT**

**JUSTINE MOCHACHE ORINA - 3<sup>RD</sup> CITOR/APPLICANT**

**VERSUS**

**MONICAH BINA OSINDI - CITEE**

**AND**

**MOKUA NAJUA OCHENGE - RESPONDENT**

**RULING**

1. By an application dated 26<sup>th</sup> November 2014 filed under certificate of urgency on 28<sup>th</sup> November, 2014, the Applicant sought orders for inter alia; the eviction of the Respondent from LR. No. **WEST MUGIRANGO/BOSAMARO WEST/17**; the sentencing of the Respondent for disobedience of a court order and a finding that the Respondent had intermeddled with the deceased's property.

The Applicant's application was brought under **Section 45** and **47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules**.

2. The Respondent opposed the Applicant's said application through his replying affidavit dated 19<sup>th</sup> January 2015 in which he denied among other things, being in contempt of a court order or having intermeddled with the estate of the deceased. The Respondent further stated that he had a stake in the suit property as a bona fide purchaser.

3. The applicant's said application was on 11<sup>th</sup> June 2015, by consent, fixed for hearing on 23<sup>rd</sup> September 2015. On the said hearing date, neither the Applicant, nor his counsel on record appeared in court to prosecute the said application leading to the counsel for the Respondent's plea for the dismissal of the same with costs to the Respondent.

4. This court is satisfied that indeed, the date for the hearing of the applicant's application dated 26<sup>th</sup> November 2014 was taken by consent.

5. The absence of the Applicant and his counsel during the said hearing without any explanation leaves this court with no option but to dismiss it for want of prosecution.

6. Consequently, the application dated 26<sup>th</sup> November 2014 is hereby dismissed with costs to the Respondent.

**Dated, signed and delivered in open court this 11<sup>th</sup> day of December, 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- N/A for Applicant
- Nyatundo holding brief for Ayienda for Respondent
- Omwoyo: court clerk



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