

Aluochier Dispute Resolution

Arbitral Institution | Arbitration | Mediation

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Registration No: BN-BGCLBG7*

24th November, 2023

The Estate of Charles Orinda Owiny (Deceased) & Julius Oluoch Mbom

c/o Carren Akeyo Owiny

WhatsApp: 0722 982384

Dear Estate of Charles Orinda Owiny & Julius Oluoch Mbom

CASE NUMBER 001 OF 2023: CAROLINE ATIENO ANDITI v THE ESTATE OF JULIUS ORINDA OWINY (DECEASED) & JULIUS OLUOCH MBOM

Aluochier Dispute Resolution (ADR) is an arbitral institution that administers arbitrations under the Aluochier Dispute Resolution Arbitration Rules, 2023 (ADR Arbitration Rules). Article 1(3)(c) of the Constitution of Kenya, 2010 provides that part of the sovereign power belonging to the people of Kenya, and that is to be exercised only in accordance with the said Constitution, is delegated to the Judiciary and independent tribunals, with the Judiciary and independent tribunals to perform their functions in accordance with the said Constitution. Article 159(1) reiterates that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the said Constitution. Article 159(2)(c) provides that in exercising judicial authority, the courts and tribunals shall be guided by principles including the mandatory promotion of alternative forms of dispute resolution including arbitration. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Consequently, independent and impartial arbitral tribunals, just as the courts, have the constitutional mandate derived from the people's sovereign power to exercise judicial authority on their behalf in the resolution of disputes capable of resolution by the application of law.

Section 2 of the Arbitration Act, 1995 provides that except as provided for in a particular case, the

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provisions of the said Act shall apply to domestic arbitration and international arbitration. The Arbitration Act is itself subject to the Constitution of Kenya, 2010, as Article 2(1) of the Constitution provides that the said Constitution is the supreme law of Kenya and binds all persons and all State organs. And section 7(1) of the Sixth Schedule of the Constitution provides that all law in force immediately before the effective date of the Constitution – 27th August, 2010 – continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the said Constitution. The Arbitration Act, an existing law at the time the Constitution became effective, is therefore to be construed to bring it into conformity with the Constitution, including allowing for, pursuant to Article 50(1) of the Constitution, the institution of arbitral proceedings, just as is the case with the institution of court proceedings, by any person without the consent or agreement of any other person, as it is the right of every person to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. 10

Consequently, in the exercise of her right under Article 50(1) of the Constitution, Caroline Atieno Anditi, the Claimant, has instituted arbitral proceedings under the administration of ADR against the Estate of Charles Orinda Owiny (Deceased) and Julius Oluoch Mbom, who are registered as the owners of **Kamagambo/Kanyamamba/603**.

THE CLAIMANT'S CASE

On or about the 10th October, 2023 a woman by the name of Carren Owiny, of telephone number 0722 982384, seemingly acting together with one of the Claimant's neighbours, one Mr Ojuka Andhoga, laid claim to the land presently occupied by the Claimant as her residence, and also her farmland, being part of Kamagambo/Kanyamamba/603. The Claimant is a widow, previously married to the late Raphael Anditi Othoo in the year 2000. Their marriage produced three children, being Roney Anditi, Oscar Anditi and Gideon Anditi. Her husband died in the year 2009, the year she commenced occupation of about 1.16 acres of Kamagambo/Kanyamamba/603 – the land on which her late husband was buried. Together with her children, she has been in quiet and uninterrupted occupation of the said portion of land, a period now amounting to 14 years. Throughout that period of occupation, she has not been harassed by anyone claiming ownership or possession rights over the said land, until about the 10th October, 2023 when Carren Owiny, 20

seemingly acting on behalf of the Estate of Charles Orinda Owiny, laid claim to Kamagambo/Kanyamamba/603.

The Claimant believes that as she has been in open, peaceful and uninterrupted occupation of about 1.16 acres of Kamagambo/Kanyamamba/603 for more than 12 years, and did not enter into the property with the permission of the registered joint owners Estate of Charles Orinda Owiny and Julius Oluoch Mbom, the title to the land that she has been in occupation of was cancelled, and that she is now the rightful owner of the said portion of land. She seeks to be declared the lawful owner of the about 1.16 acres of Kamagambo/Kanyamamba/603 that she has been in occupation of over the last 14 years, and so registered as the said owner, with title to the same presently registered in the name of Charles Orinda Owiny and Julius Oluoch Mbom cancelled, and that anyone representing the Respondents, including agents of the same, be prohibited from interfering with her quiet enjoyment of the same.

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ACTION REQUIRED OF THE RESPONDENTS

Under ADR Arbitration Rule 5.3, the arbitration commenced on 17th November, 2023. The Claimant has until 1st December, 2023 to submit a Statement of Claim supplementing the information she provided in her request for arbitration, as described above, pursuant to Rule 15.2. The Respondents have up to 15th December, 2023 to submit their Statements of Defence pursuant to Rule 15.3. Should the Respondents wish to submit a counterclaim or counterclaims, they can do so pursuant to Rule 15.4. Once all documents have been received from the parties in accordance with the Rules, they shall be forwarded to the arbitral tribunal to conduct the arbitration.

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COMMUNICATIONS IN THE ARBITRATION

A WhatsApp group including the arbitral institution, the Claimant and the 1st Respondent's representative will shortly be set up to facilitate ease of communication and sending of documents. The 1st Respondent's representative is kindly requested to avail to the arbitral institution the communication contacts of the 2nd Respondent or his representative. All communications should be made to the said WhatsApp group, that all parties be fully aware of all communications when made.

Should any of the parties have any matters requiring clarification, please do not hesitate to contact the undersigned via the WhatsApp group being set up. Otherwise we look forward to receipt of any Statement of Case from the Claimant as per Rule 15.2 and the Statements of Defence from the Respondents as per Rule 15.3, and any Counterclaims from the Respondents as per Rule 15.4.

Yours faithfully

For and on behalf of

Aluochier Dispute Resolution



Isaac Aluochier

Chief Executive

COPIED TO:

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1. **Caroline Atieno Anditi, WhatsApp: 0715 034969.**

ENCLOSED:

1. **Aluochier Dispute Resolution Arbitration Rules, 2023 dated 15th November, 2023**