



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 104 OF 2015

**RUTH ADHIAMBO OKOTH –OGENDO (suing as administrator of the estate
of late Professor H.W.O OKOTH- OGENDO).....PLAINTIFF**

VERSUS

OTTOMAN ADEL.....DEFENDANT

JUDGEMENT

1. Ruth Adhiambo Okoth – Ogendo, the Plaintiff, suing as the administratrix of the estate of the late Professor H.W.O Okoth-Ogendo, commenced this suit against Ottoman Adel, the Defendant, vide the plaint dated the 29th April 2015 seeking for a declaration that Kisumu/Kasule/2664, the suit land, is registered in the name of the estate; injunction orders restraining the Defendant from interfering with the suit land and compelling him to remove the structures he has erected thereon; general damages; costs and any other relief the court deems appropriate. The Plaintiff avers that the Defendant entered onto the suit land without consent, constructed a large portion of his home on it, erecting an electricity pole and fencing off the northern part of the land.

2. The hearing proceeded through formal proof after the defence filed was struck out vide the ruling dated the 2nd November 2016. The Plaintiff testified as PW1 and told the court that the Defendant has erected a structure on the suit land without her consent and should be evicted and injuncted. The learned Counsel for the Plaintiff sought for time to file written submissions but none was field between the 5th April 2018 to the 11th February 2019 when the suit was set down for Judgment today.

3. The following are the issues for the Court’s determination;

- a) **Who is the registered proprietor of the suit land.**
- b) **Whether the Plaintiff is the administratrix of the estate of the late Professor H. W. O. Okoth – Ogendo.**
- c) **Whether the Defendant has any beneficial or legal interest over the suit land.**
- d) **Who pays the costs.**

4. The Court has after considering the pleadings, oral and documentary evidence tendered by the Plaintiff come to the following conclusions;

a) That from the copy of the title deed and certificate of official search for Kisumu/Kasule/2664 produced by PW1 as exhibits, the said land was registered in the name of H. W. O. Okoth Ogendo on the 3rd March 1993 under entry number 2, and title deed issued on the same date. That the Court takes the said H. W. O. Okoth Ogendo to be the same Professor H. W. O. Okoth – Ogendo, whose estate the Plaintiff has sued on behalf.

b) That the copy of grant of letters of Administration and certificate of confirmation of grant dated the 29th July 2013 and 15th July 2014 respectively, and issued in Nairobi H.C. Succession Cause No. 891 of 2013, shows that Ruth Winnie Okoth Ogendo and Rodney Walter Okoth are the administrators of the estate of the late Hastings Wilfred Okoth Ogendo, and that the whole estate including Kisumu/Kasule/2664 is to be inherited by Ruth Winne Okoth Ogendo. That the court takes the said Ruth Winnie Okoth Ogendo to be the same as Ruth Adhiambo Okoth – Ogendo, the Plaintiff herein.

c) That as the Plaintiff has confirmed that the Defendant has fenced off part of the suit land and that a portion of his house is encroaching onto the land, and noting that the Defendant has not established any beneficial or legal interest over the said land, it is only fair and just that he removes himself and his structures from that portion of the suit land under his occupation.

d) That as the Plaintiff has not availed a surveyor's report to confirm the extent of the Defendant's encroachment onto the suit land, it is fair and just that the Land Registrar and Surveyor be involved to visit the suit land and confirm the boundaries of between Kisumu/Kasule/2664 and 1948 belonging to the Plaintiff and Defendant respectively, and further determine the acreage or size of encroachment of either parcel to the other.

e) That so as to help foster good neighbourliness between the Plaintiff and the Defendant, general damages and costs will not be awarded at this stage.

5. That flowing from the foregoing, the court finds that the Plaintiff has established her claim against the Defendant to the standard required. The court enters judgment for her against the Defendant as follows;

a) That a declaration is hereby issued in terms of prayer (a) of the plaint.

b) That the Plaintiff do enlist the services of the County Land Registrar and Surveyor to confirm and confirm the ground boundary of the suit land; and establish the acreage of the Defendant's encroachment onto Kisumu/Kasule/2664.

c) That upon the exercise in (b) above being completed, injunction order to issue in terms of prayers (b) and (c) of the plaint, specifically that the Defendant do give the Plaintiff vacant possession of that portion of Kisumu/Kasule/2664 that he will have been found to have encroached onto in ninety (90) days; restore that portion to its original condition; and thereafter remain restrained from interfering with the Plaintiff's use and enjoyment of the suit land.

d) Each party bears their own costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 19TH DAY OF JUNE 2019

In the presence of:

Plaintiff Absent

Defendant Absent

Counsel Absent

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE