



**Ngoge v Otieno (Environment & Land Case E005 of 2023)
[2023] KEELC 20963 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20963 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E005 OF 2023
GMA ONGONDO, J
OCTOBER 25, 2023**

BETWEEN

PETER ODIWUOR NGOGE PLAINTIFF

AND

JOSEPH ODAK OTIENO DEFENDANT

JUDGMENT

1. By a plaint dated 14th September 2023 and duly lodged on 26th September 2023, the plaintiff, Peter Odiwuor Ngoge through O.P Ngoge and Associates Advocates has sued his uncle, Joseph Odak Otieno who is the defendant herein in respect of land reference number west Kasipul/Kotieno Kochich/354. He has sought orders thus:
 - a. A declaration that the Parcel of land known as West Kasipul/kotieno-kochich/354 was registered in the names of the defendant herein as a trustee of Sarah Opere Otieno (deceased) in his capacity as the 1st born son of the late Sarah Opere Otieno (deceased).
 - b. A declaration that at all material times relevant hereto the late Sarah Opere Otieno was the true, effective, active and bona-fide owner, user and occupier of the ancestral family property, being the parcel of land known as West Kasipul/kotieno-kochich/354 measuring approximately 1.4 notwithstanding the fact that the defendant was permitted to be registered as her trustee.
 - c. An order that the Parcel of land known as West Kasipul/Kotieno partitioned/subdivided into two portions by the Land Registrar and the Rachuonyo South sub-county Surveyors in accordance with the wishes and delineations already made by Sarah Opere Otieno(deceased) who had used Euphorbia Trees to mark the boundary between her said two sons; after-which the portion which is on the left side of Sarah Opere Otieno's homestead be given to the plaintiff herein and his siblings as was gifted to them by the late Sarah Opere Otieno (deceased) in contemplation of her death under section 37 of the [Law of succession Act](#).



- d. An order that the portion on the right side of Sarah Opere Otieno's homestead be given to the defendant herein and his children as was gifted to them by the late Sarah Opere Otieno(deceased) in contemplation of her death under section 37 of the [Law of Succession Act](#).
 - e. An order that two separate title deeds arising from the two partitions be accordingly issued by the Lands Registrar in favour of the plaintiff herein and the defendant herein respectively to hold the same in trust.
2. The defendant who is unrepresented, has not filed any statement of defence in this suit.
 3. Both parties herein have entered into a consent dated 23rd October 2023 and filed in court on 24th October 2023 that:
 - a. The reliefs being sought in the plaint filed herein be allowed.
 - b. The Rachuonyo South sub-county surveyor be directed to forthwith survey the parcel of land known as West -Kasipul/Kotieno-Kochich/354 and to have the said parcel of Land sub-divided into two parcels as we delimited or delineated by the late Sarah Opere Otieno.
 - c. The Registrar of Lands Rachuonyo South sub-county be directed to issue two separate title deeds in favour of the plaintiff and the defendant.
 - d. There be no orders as to costs.
 4. The plaintiff has urged this court to adopt the consent as judgment herein.
 5. The defendant has affirmed the consent in entirety.
 6. Indeed, the said consent is in consonant with Article 159 (2) (b) and (c) of [the Constitution](#) of Kenya, 2010. So, the parties are hereby applauded for settling this dispute amicably.
 7. In the foregone, judgement be and is hereby entered for the plaintiff against the defendant in terms of the consent as stated in paragraphs 1 and 3 hereinabove.
 8. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMABAY THIS 25TH DAY OF OCTOBER 2023.

G.M.A ONG'ONDO

JUDGE

Present.

The Plaintiff

The defendant.

Court Assistant, Luanga.

