



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.40 OF 2016

ROSELINE AKINYI OMONDI.....1ST APPLICANT
MARGARET ODONGO OMONDI2ND APPLICANT
(Suing as administrators of the estate of MARTIN OMONDI OPONDO)

VERSUS

ISAAC OTIENO OBURE.....1ST RESPONDENT
DISTRICT LAND REGISTRAR, SIAYA.....2ND RESPONDENT
CHIEF LAND REGISTRAR3RD RESPONDENT
ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. **Roseline Akinyi Omondi and Margaret Odongo Omondi**, the Applicants, suing as administrators of the estate of **Martin Omondi Opondo**, filed the originating summons dated 24th February 2016, against **Isaac Otieno Obure, District Land Registrar Siaya, Chief Land Registrar and The Attorney General**, hereinafter referred to as 1st to 4th Respondents respectively, seeking for extension of time to file suit.

The application is based on six grounds on its face and is supported by the supporting affidavit sworn by Roseline Akinyi Omondi on the 24th February 2016.

2. The application is opposed by the 1st Respondent through the grounds of opposition dated 3rd June 2016.

3. The application came up for hearing on the 24th November 2016 when Mr. Oruenjo and Omay, learned counsel for the Applicants and 1st Respondent respectively, made their submissions.

4. The issues for determination by the court are as follows:

- a) Whether the Applicant have made a case for extension of time to file suit.
- b) Who pays the costs.

5. The court has considered the grounds on the application, the grounds of opposition, submissions by counsel and concluded as follows:

a) That the Applicants are among the four persons appointed as administratrixes of the estate of **Martin Omondi Opondo** who allegedly died on 3rd April 2001. This is confirmed by the certificate of confirmation of grant dated 27th August 2015 in Kisumu H.C. Succession Cause No.334 of 2009 and Certificate of death No. B 632628 annexed to the supporting affidavit.

b) That the copy of the title deed for land parcel **Siaya/Bar Agulu/2096** shows that the land was first registered on 12th August 1994 and on 31st August 1999, under entry No. 4, it was registered in the names of **Martin Omondi Opondo**, who the Applicants has indicated died on the 3rd April 2001.

c) That the certificate of search dated 23rd February 2016 in respect of land parcel **Siaya/Bar Agulu/2096** shows that the Respondent became the registered proprietor, under entry No.6, on the 29th May 2003.

d) That the affidavit evidence by the Applicants that they did not know of the 1st Respondent's registration with the suit land until the 10th November 2015, when they went to the lands office to register the transfer of the land in favour of Margaret Odongo Omondi in accordance with the certificate of confirmation of grant, has not been disputed as no replying affidavit has been filed by the 1st Respondent. That though time to recover land is 12 years under **Section 7 of the Limitation of Actions Act Chapter 22 of Laws of Kenya** this court is empowered to allow extension of time to file suit for recovery of land in appropriate cases. The provision of **Section 26 of the said Act** provides that in actions based on fraud of a Defendant the time for limitation does not begin to run until the Plaintiff has discovered the fraud.

e) That flowing from the finding in (d) above, the time for limitation began to run against the Applicants upon discovery that the land was registered in the names of the 1st Respondent which was on the 10th November 2015. That the Applicants could have gone ahead and filed their claim without seeking for extension of time as the 12 years within which to recover the land are yet to lapse from 10th November 2015.

f) That an application for extension of time should be brought through a miscellaneous application and not an originating summons. However, the court finds that there is no prejudice suffered by the Respondents by the form of moving the court.

g) That notwithstanding the finding in (e) above, the court grants the Applicants their application for extension of time and are at liberty to file the suit on behalf of the estate in 30 (thirty) days. The costs of the application will abide the outcome of the suit to be filed.

6. That flowing from the foregoing the court orders as follows:

a) That Applicants time to file suit in respect of the estate of **Martin Omondi Opondo** is hereby extended by 30 (thirty) days from today.

b) The costs of this application abide the outcome of the suit to be filed.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 29TH DAY OF MARCH 2017

In presence of;

Applicants Absent

Respondents Absent

Counsel Mr. Omayya for 1st Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

29/3/2017

29.3.2017

S.M. Kibunja Judge

Oyugi court Assistant

Parties absent

Mr. Omayya for 1st Defendant.

Court: Ruling dated and delivered in open court in presence of

Mr. Amaya for the 1st Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

29/3/2017