



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 20 OF 2007**

**ODDAH FRIDAH OCHOMO..... APPELLANT**

**VERSUS**

**SILVANUS SHINALI LIPWONI ..... RESPONDENT**

*(Being an appeal from the decision of Hon. Mr S.T Temu Resident Magistrate in Kakamega Chief Magistrate Civil Case No. 35 of 2002)*

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*(Before B. Thurania Jaden J)*

**J U D G M E N T**

On 6/9/2001, the **Land Disputes Tribunal, Lurambi Division**, made a decision that the claimant therein, **Mr Silvanus Shinali Lipwoni** who is the respondent herein who was a debtor to **KCB** should clear the bank's outstanding amount of Kshs.380,000/= and become the sole proprietor of land parcel **No. Butso/Esimeyia /559 (hereinafter suitland)**. In the **Chief Magistrate's Court, Kakamega Misc. Award No. 35/02**, the Land Disputes Tribunal's decision was adopted as a judgment of the court on 17/06/2004.

It seems there was no appeal or Judicial Review proceedings instituted against the decision of the Land Disputes Tribunal. The **Chamber Summons** application dated 10/5/2006 was filed in the aforesaid Misc. Award on 11/5/2006 seeking the following orders:-

- a. **That the Interested Party herein Oddah Friday Ochomo be and is hereby enjoined in these proceedings.**
- b. **That upon prayer (a) above being granted, the Applicant be and is hereby allowed to proceed against the Interested Party separately and/or alone.**
- c. **That Interested party be and is hereby ordered to execute all the necessary documents to cause the whole of that parcel of land Known as N/BUTSOTSO/ESUMEYIA/559 to be transferred and registered in the names of the Applicant in accordance with the Honourable Court's judgment and orders made in this case on 17/6/2004 failure of which the executive officer of this Honourable Court may be authorized and/or empowered to do so.**
- d. **That the Interested Party/Respondent do pay the costs of this application.**

The application was opposed by the appellant who sought to protect her rights as a joint proprietor following the purchase of the suitland by way of a public auction after the **Kenya Commercial Bank** exercised its statutory powers of sale. The trial court after hearing the application and the reply to the same, allowed the application as prayed on 5/2/2007. The appellant was aggrieved by the ruling dated

5/2/2007 and appealed to this court on the following main grounds:-

1. **The trial magistrate had no jurisdiction to grant the orders sought.**
2. **The appellant could not be answerable to issues relating to the estate of her deceased husband (Julius Maina Ochomo) when she had not taken out Letters of Administration to the estate of the deceased.**
3. **The trial magistrate wrongly interpreted the concept of joint ownership.**

The appeal was canvassed by way of written submissions which I have duly considered.

The lower court ruling dated 5/2/07 came in at the execution stage of the tribunal's award. The appellant herein was not a party in the case that was before the tribunal. The respondent in her case before the tribunal sued only the appellant's husband who was a joint proprietor to the suit property. The trial court had no jurisdiction to enjoin the applicant as a party at the stage of the execution of the decree. The tribunal had already made its award. The appellant was also not the administrator of the estate of her late husband for the court to order her to sign transfer documents.

**Section 102 (1) of the Registered Land Act** provides as follows:-

**“Where the land, leave or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently-**

- a. **Dispositions may be made only by all the joint proprietors; and**
- b. **On the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.”**

As a joint proprietor the interest of the appellant's husband had therefore died with him and there was nothing to be transferred.

The appeal has merits and I allow the same. The ruling of the lower court dated 5/2/2007 is set aside. Costs in the cause.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Kakamega this 29<sup>th</sup> day of May 2013.**

**SAID J. CHITEMBWE**

**JUDGE**