



**REPUBLIC OF KENYA**

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

**ENVIRONMENTAL AND LAND NO. 94 OF 2013**

**SETH NYAWARA OMAMO ..... PLAINTIFF**

**VERSUS**

**MRS MONICA ODHIAMBO ODOTE ..... DEFENDANT**

**(SUED IN HER CAPACITY AS LEGAL REPRESENTATIVE**

**OF THE ESTATE OF (GEORGE ODOTE MUDUDA)**

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

The Plaintiff brought this suit against the defendant claiming the following reliefs;-

- (a) An order that the suit property LR.NO.2116/13/11(IR NO.899) Kitale Municipality be sold to a third party and the sale proceeds there from be shared equally between the plaintiff and the defendant.
- (b)Alternatively the defendant do buy the plaintiff's share of proprietary interest in the suit property at the current market value.
- (c)Costs of the suit be provided for.
- d. Any other order/relief the court may be deemed just or fit to grant in the circumstances.

The defendant herein was sued as the administratrix of the estate of her husband George Odote Mududa (deceased). The plaintiff and the deceased were tenants in common in equal shares in respect of the suit property. There is an old building standing on the property which the owners were renting out for income. Prior to the demise of the deceased, the property had been condemned by the municipal council of Kitale and was set for demolition and reconstruction.

The notice condemning the property was produced as exhibit 5. The proprietors were unable to demolish and reconstruct as they had no funds to do so. The building was condemned in the 1990's. When the deceased died in January 2008, the plaintiff approached his family and proposed that they sell the property and share the proceeds equally or alternatively, the deceased's family buys him out and retain the property. The defendant then went ahead to have the property valued by Mwamba Valuers on 27/11/2012. The property was valued at Shs.15,000,000/=. The Plaintiff produced the valuation report as exhibit 6.

After the valuation, the defendant became uncooperative and evasive. This resulted in strained relationship between the plaintiff and the defendant. The plaintiff wrote a demand letter to the

defendant through his lawyers Messers Onyancha & Co. Advocates (Exhibit. 7). The defendant did not agree with any of the options given in the letter. This prompted the plaintiff to move to court seeking the orders listed hereinabove.

The defendant in her defence stated that she does not want to sell the property because that is where she derives income to educate her college going students. The defendant further stated that when she was going through the deceased's documents, she came across a document which indicated that it was possible to sub-divide the property. She stated that if the property was to be sold, then Tropique Dry cleaners business should as well be sold. She urged the court to dismiss the plaintiff's suit.

I have carefully considered the plaintiff's case as well as the defence case. There is no doubt that the relationship between the plaintiff and the defendant is not good. The plaintiff said so and the defendant conceded the same. The question which I pose at this stage is this; should two partners who are unable to agree be allowed to continue operating together? The answer is I think no. The relationship of the two is already strained. The property which they co-own has already been condemned. The two do not have funds to demolish the property and reconstruct. The plaintiff has offered to be bought out by the defendant who is not willing to do so. The plaintiff's offer to be bought out is made in good faith. To further confirm his good faith, he agreed to get the title to the property which was kept in the bank and handed it to the defendant's lawyer. The plaintiff is a 76 year old man who is sickly as exhibited from two letters from his personal doctors produced as exhibit 1 and 2. The plaintiff says that he has no money to develop the property and the condition in which it is, cannot bring in meaningful income. The property is in a sorry state as can be seen from photographs attached to the valuation report which was prepared at the request of the defendant.

The defendant during cross examination agreed that she does not have money to buy out the plaintiff; that the property is in desolate state and that the two cannot go along well. The plot on which the property stands is 50 x 100 ft. Though the defendant claimed that she came across a document among the deceased's documents which indicated that subdivision of the property is possible, she did not produce any such document. She instead in her own evidence in chief stated that if the property is to be sold, then the business of Tropique Dry cleaners should as well be sold. Though the business of Tropique Dry cleaners was not a subject of this suit, it is apparent from the evidence of the defendant and the plaintiff's answer during cross examination that, the plaintiff and the deceased may have had other joint businesses.

The defendant is not seriously contesting the sale and division of proceeds. I find that the plaintiff has proved his case on a balance of probabilities. The best the court can do is to order that the property be sold at the current market price and the proceeds shared equally between the plaintiff and the defendant. The alternative of the defendant buying out the plaintiff is also open. The defendant is the one who forced the plaintiff to turn to court for assistance. She should pay the costs of the suit to the plaintiff.

Dated, signed and delivered at Kitale on this 19th day of December, 2013,

**E. OBAGA,**

**JUDGE**

In the presence of Mr Kidiavai for Mr Onyancha for plaintiff and M/S Arunga for defendant.  
Court Clerk – Kassachuon.

**E. OBAGA,**

**JUDGE**

**19/12/2013**