



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 52 OF 2008**

JACOB OGOLA ONDIENGE ..... PLAINTIFF  
-VERSUS-

COMMISSIONER OF LANDS & 75 OTHERS .....DEFENDANTS

**R U L I N G**

1. By a plaint dated 15<sup>th</sup> May, 2008 the plaintiff **JACOB OGOLA ONDIENGE** (suing as the personal representative of the estate of **CORNEL ONDIEGE OGOLA**) sued the **Commissioner of Lands, Jeoros Limited and Maseno University College staff Retirement Scheme**.

2. The claim was that the late **CORNEL ONDIEGE OGOLA** was in occupation of the suit property **L. R. NO. 18040** before its acquisition in the 1990'S, that by Gazette Notice No. 3400 of 6<sup>th</sup> November, 1976 the land was set aside under the Trust Land Act for purposes of use by the Government of Kenya for Housing and Industrial Development; the deceased lodged on application for compensation on the 15<sup>th</sup> of December, 1976 but was never compensated; that on 14<sup>th</sup> of April, 1993 the 1<sup>st</sup> defendant illegally; unlawfully and fraudulently and without regard to the deceased, registered the suit land in the name of the 2<sup>nd</sup> defendant (under the Registered Land Act). The 3<sup>rd</sup> acquired the land from the 2<sup>nd</sup> defendant.

3. The plaintiff sought for the following prayers:-

a) **A declaration that the title registered on L. R. NO. 18040 in the name of the 2<sup>nd</sup> defendant JEOROS LIMITED and its successors namely; Maseno University College Staff Retirement Scheme the 3<sup>rd</sup> defendant was irregular and hence a nullity.**

b) **A declaration that the acquisition of the suit land by the Government vide Gazette Notice no. 3400 of 6<sup>th</sup> November, 1976 is unconstitutional as regards the suit land.**

c) **A declaration that the estate of the late Cornel Ondiege Ogola is the owner of the suit land and hence the estate's interest on the land be registered.**

d) **Costs of this suit.**

e) **Interest.**

4. It is proposed to enjoin several other defendants who are members of the 3<sup>rd</sup> who have acquired interest and developed the suit property and have the applicant/plaintiff seeks an order of injunction directed to the defendants, their agents or servants restraining them from selling, alienating, advertising, or in any other manner howsoever from disposing or interfering with the plaintiff's quite possession of the land or from subdividing the same.

5. The respondents objected to the application by filing an affidavit sworn by **Raphael Kapiyo** and dated 19<sup>th</sup> October, 2011; they stated that through the contribution of the 4<sup>th</sup> defendant and others the 3<sup>rd</sup> defendant bought the suit land and thereafter subdivided to each one of them; that during the purchase the title was clear; some of them have built and reside on the suit land; they have also obtained individual titles to the land; that they have wrongly been sued as the right person to have been sued is the 1<sup>st</sup> defendant.

6. In his plaint the plaintiff claims that his deceased father occupied the suit land; the family is in occupation and that their ancestors were buried on the said land.

7. From annexure JOO3 the deceased had sought for compensation over this land that was not adjudicated upon, which means that there was no title to the same when it was acquired from him. The letter is dated 7<sup>th</sup> December, 1987, the deceased and indeed the plaintiff sat over their claim there is no indication that the matter was pursued further after the said letter and the land was subsequently allocated irregularly or otherwise to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> on 12<sup>th</sup> November, 1990 and on 14<sup>th</sup> of April, 1993 the 3<sup>rd</sup> defendant acquired the same for value and thereafter sub-divided the same to its members.

8. The plaintiff may have a genuine claim. He has come to court for an equitable remedy yet he took too long. He is guilty of laches. The remedy of an injunction may not be appropriate in my view in the circumstances. The balance of convenience tilts in favour of 3<sup>rd</sup> to 7<sup>th</sup> defendants, in any event, I decline to grant the same and dismiss the application.

9. However in the interest of justice this matter should be dispensed with expeditiously as noted above, the plaintiffs may have a genuine claim, it is not lost to court that land is an immotive issue. In this regard I direct counsel for the parties must take appropriate and necessary steps in line with the new Civil Procedure in order to have the case listed for hearing within a period not exceeding 45 days.

Parties to file their list of documents, statement of witnesses and agreed issues within the next 15 days.

Case conference to be held within 15 days of the above.

Costs to abide the outcome of the case.

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2012.**

**ALI-ARONI  
JUDGE**

**In the presence of:**

..... present for Appellant

.....present for Respondent