



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**CIVIL CASE NO.36 OF 2009**

MICHAEL ODERA OTOM .....PLAINTIFF

VERSUS

1. COMMISSIONER OF LANDS.....1<sup>ST</sup> DEFENDANT

2. THE ATTORNEY-GENERAL.....2<sup>ND</sup> DEFENDANT

3. KAREN ENTERPRISES LIMITED.....3<sup>RD</sup> DEFENDANT

**RULING**

In the cause No. **HCCC 36 of 2009**, the plaintiff **Michael Odera Otom** as the administrator of the estate of **Thomas Otom Agudo** sued the Commissioner of Lands, The Attorney-General and Karen Enterprises Limited. His claim is that the 1<sup>st</sup> defendant the Commissioner of Lands irregularly, illegally and fraudulently created a lease over the suit property to be registered in the name of the 3<sup>rd</sup> defendant as **L.R. No.16345**. He claims for the following orders against the defendants jointly and severally:

(a) a declaration that the purported bringing of the suit land under the Registration of the Titles Act. Cap 281 Laws of Kenya, the creation of the grant and the subsequent creation and registration of a lease over the same in favour of the 3<sup>rd</sup> defendant was fraudulent, irregular, illegal and therefore null and void.

(b) An order canceling the bringing of the suit land under the Registration of Titles Act Cap 281 Laws of Kenya under, grant number LR 67384 the subsequent creation and registration of a lease over the same and LR No.16345 in favour of the 3<sup>rd</sup> defendant.

(c) A declaration that the suit land is the free property of the deceased and therefore forms part of the deceased's estate.

At the hearing of the defence case the 3<sup>rd</sup> defendants counsel Mr. Okero applied to have this matter consolidated with **HCCC No.56 of 2005** on the reason that the subject matter in the two cases is the same and the conflicting judgments may be issued. Mr. Mwamu for the plaintiff did not object. This court gave directions for consolidation.

However on the 11<sup>th</sup> of February, 2011 when both files were placed before court counsel for the plaintiff in **HCCC 36 of 2000** objected to the consolidation stating that the parties in the two suits are different and that the prayers sought in the second suit was for trespass.

In case **No.59 of 2005** the parties are **Karen Enterprises Limited** is **Lawrence Musanga Oketch, Peter Opiyo and Joyce Wanyawa**

The plaintiff's claim against all the three defendants is that they have illegally put semi permanent structures on his land and their action amount to trespass on his land.

The plaintiff seeks for the following prayers:

**(i) Possession of the suit land;**

**(ii) An order compelling the defendants to immediately demolish and remove at their cost all and any structures, buildings and/or material constructed and/or brought and/or left on the suit land failing which the demolition and removal of structures, building and/or material be effected by the plaintiff with the assistance of the court bailiff and law enforcement officers at the expense of the defendants;**

**(iii) An order of injunction permanently restraining them, their employees, servants, agents, licensees and/or assigns, from entering upon, taking possession of, trespassing on, carrying out any construction thereon or excavation there from and from alienating or interfering, by any other means howsoever, with the suit land or any part thereof;**

**(iv) General damages for trespass;**

**(v) The costs of this suit, both party and party and advocate and client together with interest thereon at court rates from the date of filing suit and until payment thereof in full;**

**(vi) Any other or further relief as the court may deem just and fit to grant.**

The out-come of **HCCC 36 of 2009** will have a bearing on **HCCC No.59/05** and since one case i.e. **HCCC 36 of 2009** is at defence hearing and **HCCC 59/05** is yet to start in the circumstances I review my orders of 27<sup>th</sup> of October, 2010 to the effect that **HCCC No.59 of 2005** be stayed pending hearing and determination of **HCCC No.36 of 2009**.

**Dated and Delivered at Kisumu this 11<sup>th</sup> February, 2011**

**ALI-ARONI**

**J U D G E**

**In the presence of:**

..... Counsel for plaintiff  
.....Counsel for defendant

