



Anganya (Suing as the legal and personal representative of the Estate of Lawrence Odero Abuor (Deceased)) & another v Owuor & 2 others (legal representatives of Okondo Opondo) (Environment & Land Case E25 of 2020) [2022] KEELC 2557 (KLR) (15 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2557 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E25 OF 2020

A OMBWAYO, J
JULY 15, 2022

BETWEEN

MONICAH AKEYO ANGANYA 1ST PLAINTIFF

FELIX ODHIAMBO ABUOR 2ND PLAINTIFF

AND

JENIFER AKUMU OWUOR 1ST DEFENDANT

PAUL ODHIAMBO WERE 2ND DEFENDANT

JARED OLIMA WERE 3RD DEFENDANT

LEGAL REPRESENTATIVES OF OKONDO OPONDO

RULING

1. Monicah Akeyo Anganya has come to court on behalf of Lawrence Odero Abuor (deceased) and Felix Odhiambo against Jenifer Akumu Owuor, Paul Odhiambo Were and Jared Olima Were as legal representatives of Okondo Opondo in a claim of adverse possession.
2. The applicants claim is for this court to determine whether the Applicants/Plaintiffs are entitled to be declared the proprietor of a portion of parcel Number Kisumu/Kajimbo/354 by virtue of its Adverse Possession for the period prescribed in the *Limitation Of Actions Act* Cap. 2 laws of Kenya.
3. Moreover, whether the Applicants/Plaintiffs are entitled to be declared the proprietor of a portion of the parcel Number Kisumu/Kajimbo/354 by virtue that there was constructive trust when the said portion was to be transferred to the applicants as per the agreement.
4. Furthermore, whether the Registrar of Lands is to be directed that the Order made herein shall be an instrument of transfer of ownership of the said portion measuring 3 acres of land parcel Number



Kisumu/Kajimbo/354 from the Respondents to the Applicants upon subdivision and whether the Respondent can be restrained from wasting, damaging and/or in any way alienating parcel Number Kisumu/Kajimbo/354 until the hearing and determination of this matter. Lastly, whether the costs are to be included in the cause.

5. In the supporting affidavit the applicants claim that she is the widow of Lawrence Odera deceased who died on June 21, 2011 and that her late husband together with his Brother (Felix Abuor) had jointly purchased a portion of land parcel no. Kisumu/Kajimbo/354 measuring approximately 3 acres in 1987 from one Salina Auma (now deceased) who was the wife to Okodo Opondo (deceased).
6. That upon purchase her late husband and Felix Abuor took possession of the said portion and began tree farming by planting several trees of eucalyptus Grandis species.
7. That her late husband and Felix Abuor were in peaceful possession and occupation of the said portion of land since 1985 without any interference or interruptions from anyone.
8. That she knows to the best of her knowledge that her late husband requested the family of Okodo Opondo to process for him and Felix Abuor title deeds to the portion they bought and that is when one Petro Nyajur Okode (son to Okodo Opondo (deceased) was tasked to process the death certificate for the late Okodo Opondo and to assist her late Husband obtain title.
9. That her late husband together with Petro Nyajur Okodo went to the land control board with intention to sub divide the said portion owned by her husband and Felix Abuor.
10. That her husband and Felix Abuor have been in possession and utilizing the said land parcel for more than 30 years.
11. That further upon maturity of the trees on the parcel of land Felix Abuor has been harvesting the trees and replanting new seedlings since 2004.
12. That currently there are a total of 3,247 trees which amount to Kshs. 8,276,564.00.
13. That her late husband and Felix Abuor have been in occupation and possession of the said parcel of land since 1987 to date and her late husband and Felix Abuor have used it continuously without any interruption whatsoever until this year, 2020.
14. The Defendant filed an application praying that their names be struck out from the pleadings on grounds that they have no capacity to be sued as they have not been appointed as legal representatives of the deceased.
15. The applicants state that Kisumu Succession Cause no. 435 of 2015 has stalled and it is not clear who will be appointed administrator or administratrix.
16. I have considered the application and do find that before being appointed as the legal representatives of the estate of the deceased, the respondents have no capacity to sue or be sued on behalf of the deceased and therefore the suit herein is premature and is hereby entirely struck out.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15th DAY OF JULY 2022,

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

