



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 267 of 2006**

**JERUSHA NYAKERARIO OBARE ..... PLAINTIFF**

**VERSUS**

**SAMUEL OMONI OBARE ..... DEFENDANT**

**JUDGEMENT**

I have before me an Original Summons dated 22<sup>nd</sup> June, 2006 premised under Section 57 of Registration of Titles Act (Cap 281), Order XXXVI Rule 3B of Civil Procedure Rules and all other enabling provisions of the Law.

It seeks following relief:

- 1. Whether the Defendant may show cause why caveat Registered as IR No.79971/2 on 19<sup>th</sup> January, 2004 on L.R. No.209/2745 should not be withdrawn and/or removed.**
- 2. Whether the Defendants beneficial interest on LR. No.209/2745 (IR No.79971) have been extinguished by the Order given in HCSC No.583 of 1991 on 8<sup>th</sup> December, 2004.**
- 3. Whether this Honourable court may be pleased to Order that the Registrar of Titles do remove the caveat Registered as on LR.NO.209/2745 (IR NO.79971) on 19<sup>th</sup> January, 2004 by the Defendant.**
- 4. THAT the costs of this suit be provided for.**

The reliefs are out of ordinary but I shall look at the spirit thereof.

Originating summons is supported on the grounds set out on the face of the application and on an affidavit in support sworn on 22<sup>nd</sup> June, 2005 by the Plaintiff herein.

The defendant herein has failed to file a response despite services effected on him on every stage of this proceedings. At the time of hearing of Originating Summons, after satisfying my self that the Defendant was properly served, I proceeded to hear the matter ex-parte.

The facts in this case are simple, not controverted and are supported by documents of title for the property in question.

The plaintiff was registered as a joint tenant along with her late husband Evans Omoni in respect of property known as LR. No.209/2745 (IR No.2733). After the demise of her husband a new grant was issued in her names vide grant No. IR 79971.

Due to oversight the said property was wrongly listed as an estate property in the Certificate of Grant issued to the plaintiff on 26<sup>th</sup> February, 1993 in HC Succession Cause No.583/91, which in any event was rectified by an order of the court on 8<sup>th</sup> December 2004.

With this order of rectification under which the suit property was removed from the list of estate properties, the beneficial interest of the Defendant over the same was clearly extinguished. I do accept the contention of the Plaintiff and find that the suit property became the property of the plaintiff on demise of her husband with whom she owned the property in joint tenancy.

The upshot of all the above is that I direct the Commissioner of Lands to remove the caveat registered as IR No.79971/2 on 19<sup>th</sup> January, 2004 on the property known as LR.No.209/2745.

I do not make any order on costs.

Dated and signed at Nairobi this 7<sup>th</sup> day of March, 2007.

**K.H. RAWAL**

**JUDGE**

**7.3.07**