



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE NO.77 OF 2003**

RISANILE ATIENO OCHUKA PLAINTIFF

VERSUS

MUSA DAMA ONOKA)

EVELYNE ATIENO OTURI)..... DEFENDANTS

D.O. DULO LAND REGISTRAR MIGORI/KURIA)

JUDGMENT:

The plaintiff's plaint is for an injunction against the 2nd defendant from interfering with plaintiff's portion of land measuring 0.40 Ha. and for an order for the defendants to transfer a portion of 0.40 Ha. from land parcel No. North Sakwa Kamasoga/1830. She also prays for costs.

The defendants did not file a defence within the stipulated time and interlocutory judgment was entered on 15th September 2003.

In her evidence the plaintiff (PW1) told court that in 1985 she entered into a sale agreement with the 1st defendant who was to sell to her a portion of 2 acres (0.40 Ha.) of his land. The purchase price then was shs.6000/= which she paid in full. 1st defendant put her in occupation of the land, and she built a house there. They attended Land Control Board a consent was given to sub-divide the land. The land was subdivided by M/s Olweny & Associates and the documents taken to Land Registrar Migori for transfer and registration. The whole land was however registered in the name of the 1st defendant. The 1st defendant was to transfer a portion to the plaintiff. He however sold and transferred the whole land to the 2nd defendant.

Plaintiff called one JOHN OWOUR ANUNDO as a witness (PW2). He testified that he was a witness when the 1st defendant sold apportion of the land to the plaintiff. He signed the sale agreement.

I have considered the evidence. The 2nd defendant is now the registered owner of the whole land in question. However the plaintiff has clearly shown that she had purchased a portion of the land from the 1st defendant. She told court that she went into occupation of her portion and built a house there. No doubt

the 2nd defendant knew that the plaintiff was in occupation when she bought the land. The plaintiff had already lodged her documents with the 3rd defendant.

Having been in occupation of the land for the last 18 years the court can order rectification of the registration to the 2nd defendant. This was so held in the case of CHAUHAN –VS.- OMAGWA (1985) KLR 656 which was cited to issue.

I am therefore satisfied that plaintiff has proved her case on balance of probabilities and I enter judgment in her favour as prayed.

KABURU BAUNI

JUDGE

14/6/04

Signed, dated and delivered on 14th June 2004. Mr. Anyona for plaintiff.

KABURU BAUNI

JUDGE