



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT HOMA BAY

ELC APPEAL NO. 3 OF 2021

(FORMERLY MIGORI ELC APPEAL CASE NO. 01 OF 2020)

DENNIS ODIWUOR OPIJA.....APPELLANT

VERSUS

MIKE OTIENO ORANGA.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon J.P. Nandi (PM) in Oyugis SPM's court land case no 16 of 2018 dated 30th December 2019)

RULING NO. 1

1. At the outset, it is noteworthy that the instant determination is not the “Final Judgment” in this appeal; see the definition of the term “Final Judgment” in the **Black's Law Dictionary 10th Edition at page 971**.
2. The appellant appears in person in the appeal.
3. The **respondent** is represented by Messrs Ogari and company Advocates.
4. The present appeal springs from the Judgment and decree of the trial court (J.P.Nandi, PM) rendered on 30th December 2019 in Oyugis SPM's Court Environmental and Land Case No. 16 of 2018 where the learned trial magistrate arrived at a finding that the **respondent, MIKE OTIENO ORANGA** who was the plaintiff before the trial court was entitled to the remedies sought in the plaint dated 3rd May 2017. Therefore, he entered judgment in his favor accordingly.
5. The appellant, **DENNIS ODIWUOR OPIJA** who was the defendant before the trial court, was aggrieved thereby. Thus, he originated the instant appeal.
6. Indeed, the appellant commenced this appeal by way of a memorandum of appeal dated 8th January 2020 and duly lodged in court on 28th January 2021. The grounds are set out on the body of the said memorandum where the appellant has proposed that this appeal be allowed and the judgment of the trial court be set aside.
7. The learned trial magistrate found that the appellant's claim that he was a beneficiary of the estate of the late Remjus Olare Onditi (Deceased) could not succeed as he had not challenged the succession cause. That therefore, the appellant was a trespasser on the suit land, LR number West Kasipul/Kotieno Kokech/60 registered in the name of the respondent.
8. The appeal was admitted on 21st September 2020. The appellant and the respondent filed submissions dated 7th May 201 on 24th May 2021 and dated 20th March 2021 on 22nd March 2021 respectively further to this court's orders and directions given on 25th February 2021.
9. Clearly, the issue of beneficiary is raised on grounds 1,3, 5 and 6 of this appeal. This court is conscious of the relevant legal provisions thereof. Moreover, Oyugis SPM'S Court Succession cause number 68 of 2012 cuts across the parties' respective submissions and it is important to confirm its current status.
10. Bearing in mind the powers of this court under **Sections 3 and 13 (1) of the Environment and Land Court Act, 2015 (2011), sections 1A, 1B, 3, 3A and 78 of the Civil Procedure Act Chapter 21 Laws of Kenya** all targeted at meeting the best ends of justice, it is hereby ordered and directed thus;

a) The Deputy Registrar of this court to urgently call for the original record and a certified copy of proceedings and determination, if any, in Oyugis SPM'S Court Succession Cause number 68 of 2012 within the next thirty (30) days from this date for the attention of

this court before a final determination is arrived at in this appeal.

b) The appeal is fixed for mention to confirm compliance with order number (a) hereinabove and for directions on 26th October 2021.

c) It is so ordered.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT HOMA BAY THIS 22ND DAY OF SEPTEMBER 2021

G M A ONGONDO

JUDGE

In the presence of:

a) The appellant in person

b) Mr. M. Osoro holding brief for Mr Ogari, learned counsel for the respondent