



REPUBLIC OF KENYA



**Ojwang v Owino; Odongo (Interested Party) (Civil Appeal 55 of 2023)  
[2024] KEHC 14851 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CIVIL APPEAL 55 OF 2023  
A. ONG'INJO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**DOROTHY ACHIENG OJWANG ..... APPELLANT**

**AND**

**MARGARET ANYANGO OWINO ..... OBJECTOR**

**AND**

**NICHOLAS ONYANGO ODONGO ..... INTERESTED PARTY**

*((Being an Appeal against the whole Judgment of the Chief Magistrate's Court at Migori  
(Hon. D. Onyango (CM) dated 17<sup>th</sup> January, 2022 in CMCC No. 135 of 2018))*

**JUDGMENT**

1. This is an Appeal from the Judgment of Hon. D. Odhiambo (CM) in Migori CMC Succession Cause No. 135 of 2018 in the estate of Elizaphan Otondo Ombero which comprised of parcels of L. R. Suna East / Wasweta 1 / 3191 and 7152.
2. The trial magistrate found that the Objector's and Interested Party's interest as purchaser from the deceased ought to have been taken into account by the Petitioners as liabilities of the estate and the time of distribution.
3. The trial Magistrate distributed LR Suna East / Wasweta 1 / 3191 to Margret Anyango Owino 0.12Ha and Nicholas Onyango Odongo 50 x 100ft. The remainder to be registered in the name of the Petitioners.
4. The Petitioner was ordered to sign the necessary documents for the successful registration of portions of LR Suna East / Wasweta 1 / 3191 in favour of the objector and interested party within 30 days.



5. The Appellants memorandum of appeal dated 1.1.2022 was premised on the following grounds: -
- a. That the learned Trial Magistrate erred in law and in fact in holding that the Respondent had proved ownership and was in fact a liability to the estate of the deceased despite overwhelming uncontradicted and material placed before the court.
  - b. That the learned Trial magistrate erred in law and fact when he allowed the Respondents prayer and dismissed the Appellants submissions which was to the effect that a claim for right to ownership of land can only be brought and /or enlisted in the ELC and not in a succession cause as was done on the Respondent.
  - c. That the learned trial Magistrate erred in law and in fact by failing to put into consideration the evidence adduced before him and therefore arriving at a wrong conclusion that the Respondent is a liability to the estate and from the ordering that the Appellant do prepare transfer documents for the suit property failure to which the court would take action.
  - d. That the learned trial magistrate erred in law and fact by failing to consider the magnitude of the issues involved and/or appreciating the evidence placed before the court thereby reaching a decision that is unsustainable in law.
6. The Appellant prayed that the appeal be allowed with costs. He sought the judgment be set aside. Directions were taken that the appeal be heard by way of written submissions on 23.7.2024.
7. The Appellant filed submissions dated 16.8.2024 whereas the Respondent filed submissions dated 5<sup>th</sup> November 2024.
8. This court has considered the grounds of appeal, the evidence on record in the trial court the judgment of the trial Magistrate and the submissions by respective parties and finding found by the trial magistrate that there was credible evidence that the objector and interested party were beneficiaries in the estate of the deceased for value. They did not only purchase but also took occupation of the portions sold to them by the deceased.
9. The Petitioner / Appellant having confirmed that the Respondents were in occupation of the portions forming part of the estate of the deceased and having failed to controvert evidence that they purchased from the deceased this court finds no reason to unsettle, the findings of the trial magistrate. The Appeal lacks merit and is dismissed.

**DELIVERED DATED AND SIGNED AT MIGORI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**A. ONG'INJO**

**JUDGE**

In the presence of:

