



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MIGORI**

**MISC. CIVIL APPLICATION NO. 274 OF 2018 (O.S.)**

**(Formerly Kisii High Court Misc. Civil Appln. No. 54 of 2002 (O.S.))**

**[CORAM: MRIMA, J.]**

1. SAMUEL OLIER KICHUKA
2. LUCAS OKOTH KICHULA
3. ELISHA OCHIENG KICHULA
4. EDWARD AKONGO OYUGI
5. THE ESTATE OF PHILIMON KICHULA PONDO.....PLAINTIFFS

VERSUS

1. TOBIAS ONYANGO KICHULA
2. MARY KICHULA
3. MIGORI MUNICIPAL COUNCIL.....DEFENDANTS

**JUDGMENT**

**Background:**

1. This suit was commenced by way of Originating Summons. The Summons was dated and even filed on 23/05/2002 in the High Court at Kisii. The Summons was amended by an order of the Court. The Amended Originating Summons is dated 22/04/2003 and was filed on 23/04/2003.
2. The Summons was anchored on two Affidavits. The first one was sworn by **Samuel Oler Kichula**, the 1<sup>st</sup> Plaintiff herein, on 15/05/2002. It was filed on 23/05/2002. The second Affidavit was sworn by **Prof. Edward Akang'o Oyugi**, the Fourth Plaintiff herein, on 22/04/2003. It was filed on 23/04/2003.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein defended the Summons. They relied on the Replying Affidavit sworn by **Mary Kichula** and filed on 05/11/2002. The 3<sup>rd</sup> Defendant did not participate in this case.
4. On 10/12/2002 directions were given before **Wambilyangah, J.** Parties recorded a consent which was adopted as an order of the Court. The Summons was treated as a Plaint and the Replying Affidavit as a Defence. The suit was fixed for hearing on 07/04/2003.
5. The suit proceeded for hearing *ex parte* on 08/10/2003. The 1<sup>st</sup> Plaintiff testified as PW1. Further hearing of the suit was adjourned. The suit was thereafter transferred to this Station. Parties appeared before me and further directions were taken. The hearing proceeded from where it had reached.
6. The 4<sup>th</sup> Plaintiff testified as PW2 and the Plaintiffs' case was closed. Both the 1<sup>st</sup> and 4<sup>th</sup> Plaintiffs filed their written statements. They also adopted them as part of their respective evidence. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants testified and closed their case. Written submissions were filed

and duly highlighted upon.

7. From the record the Court file in Kisii High Court disappeared and a reconstruction ordered. That may partly explain why the suit filed in 2002 was eventually heard in 2019.

**The Plaintiffs' case:**

8. The Plaintiffs' case arose from the sale of Plot No. 82 Migori Municipality (hereinafter referred to as '**the plot**'). The plot initially belonged to one **Philimon Kichula Pondo** who later passed on. I will henceforth refer to the late Philimon Kichula Pondo as '**the deceased**'. A Grant of Letters of Administration Intestate to the estate of the deceased was issued to the 1<sup>st</sup> Plaintiff. The Grant was subsequently confirmed. That was in *Migori Senior Principal Magistrates Court Succession Cause No. 137 of 1995*.

9. The 4<sup>th</sup> Plaintiff bought the plot during the currency of the administration of the estate of the deceased. The sale was by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs. The sale was reduced into writing.

10. As the 4<sup>th</sup> Plaintiff was awaiting the transfer of the plot to himself he learnt that there were differences between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants over the plot. He further learnt that that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had in liaison with the 3<sup>rd</sup> Defendant caused the transfer of the plot to 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 1<sup>st</sup> Defendant was an employee of the 3<sup>rd</sup> Defendant. The Plaintiffs contended that the alleged transfer was unlawfully thereby null and void *ab initio*.

11. The dispute culminated with the filing of *Kisii High Court Misc. Civil Application No. 129 of 2007*. It was a Chamber Summons taken out by the 1<sup>st</sup> Defendant against the 1<sup>st</sup> Plaintiff. It sought the revocation of the Grant of Letters of Administration Intestate to the estate of the deceased issued to the 1<sup>st</sup> Plaintiff. It also sought the revocation of the resultant Certificate of Confirmation of the Grant. The Chamber Summons was dismissed on 01/11/2010 for want of prosecution.

12. The Plaintiffs then filed the Summons against the Defendants. The Plaintiffs sought for the following orders in the Amended Summons: -

**1. The sale by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs to one Professor Edward Akong'o Oyugi. 4<sup>th</sup> Plaintiff and the purchase by Edward Akong'o Oyugi Plaintiff from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs as it were of Plot Number 82 MIGORI MUNICIPALITY for valuable consideration be approved and or given effect.**

**2. The purported transfer of Plot Number 82 - Migori Municipality by the 3<sup>rd</sup> Defendant from the names of the Later Philimon Kichula Pondo - Deceased to the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly be set aside, nullified and or be declared null and void and of no effect.**

**3. The Court be pleased to prove and or effect transfer of Plot Number 82, Migori Municipality to the 4<sup>th</sup> Plaintiff Prof. EDWARD AKONG'O OYUGIO absolutely and forthwith.**

**4. Costs of this suit be borne by the Defendants either jointly and or severally.**

13. The 1<sup>st</sup> and 4<sup>th</sup> Plaintiffs testified in support of the Amended Summons. The 1<sup>st</sup> Plaintiff contended that he was the sole Administrator of the estate of the deceased. He further contended that the sale of the plot to the 4<sup>th</sup> Plaintiff was lawful. The 1<sup>st</sup> Plaintiff testified that when the Grant was confirmed the entire estate of the deceased vested in him. He further testified that he then began consolidating the estate of the deceased and distributed it accordingly.

14. According to the 1<sup>st</sup> Plaintiff the deceased left behind several immovable properties. The properties included Plot No. 5 Migori Municipality, Plot No. 76A Migori Municipality, Plot No. 76B Migori Municipality, Plot No. 82 Migori Municipality, Suna East/Wasweta I/3455 and Suna East/Wasweta I/13073.

15. The 1<sup>st</sup> Plaintiff further testified that several family meetings were held on the distribution of the properties. The family eventually agreed to share the said properties as follows: -

(i) Plot No. 5 Migori Municipality devolved to Tobias Onyango Kichula (2<sup>nd</sup> Defendant), Paul Geko, Paul Odhiambo Kichula and Plista Kichula;

(ii) Plot No. 76A Migori Municipality devolved to Martin Otieno Kichula, George Otieno Kichula, Charles Juma Kichula and Mary Kichula (1<sup>st</sup> Defendant);

(iii) Plot No. 76B Migori Municipality devolved to George Kichula, Jerry Kichula and Persila Kichula;

(iv) Plot No. 82 Migori Municipality devolved to Samuel Oler Kichula, Lucas Okoth Kichula and Elisha Ochieng Kichula.

16. The 1<sup>st</sup> Plaintiff also stated that the foregone properties were all commercial plots within Migori town. He also revealed that the respective beneficiaries of Plot No. 5, Plot No. 76A and Plot No. 76B sold their properties accordingly. The sale transactions have not been objected to by anyone in the family of the deceased.

17. The 1<sup>st</sup> Plaintiff posited that problems arose when the beneficiaries of Plot No. 82 sold the plot to the 4<sup>th</sup> Plaintiff. The 1<sup>st</sup> Plaintiff further posited that when the 1<sup>st</sup> Defendant, Paul Odhiambo, Martin Otieno and John Geko learnt of the sale of plot to the 4<sup>th</sup> Plaintiff they also demanded a share of the proceeds. The said four are also brothers of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs.

18. As nothing was forthcoming, the 1<sup>st</sup> Defendant caused the 1<sup>st</sup> Plaintiff to be arrested and locked up at the Migori Police Station for 4 days. The allegation was that he had unlawfully sold the plot to the 4<sup>th</sup> Plaintiff whereas the plot belonged to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The police investigated the case. They found no infringement of any criminal law and did not prefer any charges against the 1<sup>st</sup> Plaintiff. The 1<sup>st</sup> Plaintiff recalls that upon release from the unlawful custody his said four brothers attacked and assaulted him. They also robbed him Kshs. 100,000/=. The 1<sup>st</sup> Plaintiff reported the matter to the police and Martin Otieno and John Geko were arrested and charged. The rest were at large but were still being pursued.

19. The 1<sup>st</sup> Plaintiff further testified that family meetings were held in respect to the criminal case. It was unanimously agreed that the 1<sup>st</sup> Plaintiff withdraws the criminal case against his siblings and the sale of the plot to proceed on accordingly. The plot was to be transferred to the 4<sup>th</sup> Plaintiff. The 1<sup>st</sup> Plaintiff recalled that upon that family agreement and undertaking he withdrew the criminal case.

20. It was further contended by the 1<sup>st</sup> Plaintiff that those who were opposed to the sale of the plot regrouped and furthered their intentions. The 1<sup>st</sup> Defendant then filed *Kisii High Court Misc. Civil Application No. 129 of 2007* and sought to revoke the Grant and the confirmation. The application was dismissed.

21. The 4<sup>th</sup> Plaintiff also testified. He narrated how he purchased the plot. He further narrated that he carried all due diligence over the property through his Advocates *Messrs. Okong'o & Company Advocates*. That he was shown the succession documents from the Migori Magistrates Court which his Counsel vouched to be in order. He also stated that all the beneficiaries of the plot took part in the sale. The 4<sup>th</sup> Plaintiff also learnt that the 1<sup>st</sup> Plaintiff was the sole Administrator of the estate of the deceased. The sale was reduced into writing and all beneficiaries consented to it.

22. According to the 4<sup>th</sup> Plaintiff he entered into the sale transaction with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs in good faith and on the assurance by the beneficiaries and his Advocates that the property was legally available for sale. He also saw various succession documents in confirmation of the position. He testified that he was not and did not intend to be part of the dispute within the family of the deceased. He sought the transfer of the plot to himself.

23. The Plaintiffs filed written submissions. They submitted that the plot was part of the estate of the deceased. It was further submitted that since the deceased died intestate then the plot, among all the other properties in the name of the deceased, were governed under the **Law of Succession Act, Cap. 160** of the Laws of Kenya.

24. The Plaintiffs submitted that the 1<sup>st</sup> Plaintiff instituted *Migori Senior Principal Magistrates Court Succession Cause No. 137 of 1995* and petitioned for the grant of the administration of the deceased. A Grant was issued to him. Relying on **Section 79** of the **Law of Succession Act** and the decision in *Re The Estate of Thiongo Nginyayu Muthiora – Deceased (2013) eKLR* the Plaintiffs submitted that all the properties of the deceased were vested in the 1<sup>st</sup> Plaintiff upon the issuance of the grant. The grant was later confirmed. The properties were then to be distributed to the beneficiaries.

25. The Plaintiffs supported the sale of the plot to the 4<sup>th</sup> Plaintiff. It was contended that the sale was done by the beneficiaries to the plot and due consideration passed to the said beneficiaries. It was also submitted that the sale complied with **Section 2** of the **Law of Contract Act** as it was reduced into writing, the parties had capacity, there was a valid consideration and all parties thereto met all their obligations under the Agreement.

26. On the validity of the transfer of the plot by the Defendants to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants it was submitted that since the plot was part of the estate of the deceased then all the dealings that were carried out without the sanction of the 1<sup>st</sup> Plaintiff amounted to intermeddling with the estate property under **Section 45** of the **Law of Succession Act**. The Plaintiffs prayed that their case be allowed as there was no valid defence to the contrary.

#### **The Defendants' case:**

27. The 3<sup>rd</sup> Defendant did not participate in this matter. The 1<sup>st</sup> Defendant testified that he was employed by the 3<sup>rd</sup> Defendant as an Enforcement Officer and that the 2<sup>nd</sup> Defendant was his mother. He adopted his statement as part of his evidence. He testified that the plot was initially registered in the name of the deceased and the 2<sup>nd</sup> Defendant. He further testified that upon the death of the deceased the plot was transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

28. The 1<sup>st</sup> Defendant then led a scathing attack on how the Grant of Administration of the estate of the deceased and the Certificate of Confirmation were obtained. He pointed out several anomalies.

29. Some of the shortcomings that were pointed out were that the Certificate of Confirmation of the Grant included only the properties known as Suna East/Wasweta I/3455 and Suna East/Wasweta I/13073 and that Form P&A 5 only contained the two properties. As a result, the 1<sup>st</sup> Defendant argued that the plot was not under the administration of the 1<sup>st</sup> Plaintiff. He also argued that the transfer to the 4<sup>th</sup> Plaintiff remained null and void *ab initio*.

30. The 1<sup>st</sup> Defendant clarified in cross-examination that the deceased had registered the plot in the name before he died. He further stated

that the deceased orally distributed his properties before death and gave the plot to the 2<sup>nd</sup> Defendant. He alluded that upon the demise of the deceased the plot was legally transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by the 3<sup>rd</sup> Defendant. He also noted that the transfer was not based on any court documents but some proceedings within the 3<sup>rd</sup> Defendant. He further admitted that the grant and the confirmation were unsuccessfully challenged.

31. The evidence of the 2<sup>nd</sup> Defendant was similar to that of the 1<sup>st</sup> Defendant in many aspects. The 2<sup>nd</sup> Defendant wholly relied on the Replying Affidavit. She insisted that the plot was lawfully transferred to her and the 1<sup>st</sup> Defendant by the 3<sup>rd</sup> Defendant. The 2<sup>nd</sup> Defendant therefore faulted the transfer to the 4<sup>th</sup> Plaintiff as fraudulent.

32. The Defendants also filed written submissions. They raised several issues including the validity of the sale agreement, that the plot had been bequeathed by the deceased to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the validity of the Grant of Letters of Administration to the estate of the deceased and the resultant Certificate of Confirmation which did not identify the shares of the beneficiaries, whether the Plaintiffs fraudulently dealt with the plot among others. It was also contended that the Grant and the resultant Certificate of Confirmation of the Grant were fraudulently obtained before the death of the deceased.

33. The Defendants urged this Court to find that the Grant and the resultant Certificate of Confirmation of the Grant were a nullity as they were obtained before the deceased died. On that score it was submitted that the sale is unenforceable. It was submitted that the plot was not part of *Migori Senior Principal Magistrates Court Succession Cause No. 137 of 1995*. This Court was urged not to disinherit the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are among the beneficiaries of the estate of the deceased by allowing the sale. It was also vehemently submitted that since the deceased was polygamous then the estate was to devolve under **Section 40** of the **Law of Succession Act**. The Defendants prayed that the Summons be dismissed with costs.

#### **Issues for Determination:**

34. I have carefully read and understood the parties' pleadings, submissions and the decisions they relied on. I discern the following issues for determination:

- (i) The jurisdiction of the Court;
- (ii) Whether Plot No. 82 was legally sold to the 4<sup>th</sup> Plaintiff;
- (iii) Remedies

35. I will address the issues sequentially.

#### **Analysis and Determinations:**

##### **(i) The jurisdiction of the Court:**

A. This issue was not raised by the parties. However, I deemed it proper to address it for three reasons. One, the proceedings were instituted way before the advent of the current **Constitution**. Two, it is well known that the jurisdiction of the High Court is now limited in the **Constitution**. Three, jurisdiction is so central such that a Court must down its tools once it forms the opinion that it lacks jurisdiction. (See the *Supreme Court of Kenya Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others, Court of Appeal in Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR* among many others.)

36. This matter has a long history. It all began with *Migori Senior Principal Magistrates Court Succession Cause No. 137 of 1995* which petitioned for the Grant of Letters of Administration of the deceased. The grant was eventually issued to the 1<sup>st</sup> Plaintiff. The grant was unsuccessfully challenged in *Kisii High Court Misc. Civil Application No. 129 of 2007*. This suit then followed.

37. From the record I have noted that the administration of the estate of the deceased is yet to be completed. That is because although the grant was confirmed the shares of the beneficiaries were to be ascertained and estate properties duly transferred. Had the administration been completed then this Court would not have had any jurisdiction. That is because the duty of a Succession Court is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries. Once the process is completed then that marks the end of the jurisdiction of a succession court.

38. This Court therefore has jurisdiction over the suit.

##### **(ii) Whether Plot No. 82 was legally sold to the 4<sup>th</sup> Plaintiff:**

39. There is no dispute that Plot No. 82 was registered in the name of the deceased. It was hence the property of the deceased. It formed part of the estate of the deceased upon his death.

40. The estate of the deceased was to be administered under the **Law of Succession Act**. To that end *Migori Senior Principal Magistrates Court Succession Cause No. 137 of 1995* was instituted. The grant was issued and it is now confirmed. The Defendants have vehemently challenged several aspects of the grant and the resultant confirmation.

41. There is need to respond to the many challenges raised by the Defendants in respect to the grant, the Certificate of Confirmation and the

overall administration of the estate of the deceased. That is because the issues have formed a relatively large part of the Defendants' case and their submissions.

42. This suit deals with the enforcement of the sale agreement between part of the beneficiaries and the 4<sup>th</sup> Plaintiff over the plot. All matters in respect of how the grant was procured, the illegalities thereon (if any), whether the plot had been bequeathed to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant by the deceased before death, whether the plot had been disclosed in Form P&A5 and the possible effect of non-disclosure, among others cannot be part of this suit. Such matters can only be canvassed in the succession suit. That is the reason why the 1<sup>st</sup> Defendant filed *Kisii High Court Misc. Civil Application No. 129 of 2007*. The application was however dismissed.

43. As matters now stand the plot was sold to the 4<sup>th</sup> Plaintiff by some of the beneficiaries. Although the identification of the shares and the eventual distribution of the estate properties may not be complete as yet, the sale is protected by **Section 93** of the **Law of Succession Act**. There are however exceptions thereto. (See the Court of Appeal in *Kisumu Civil Appeal No. 53 of 2015 Benson Manai Mahinye v Waiganagana A. Kendi (2016) eKLR*, *Jecinta Wanja Kamau v. Rosemary Wanjiru Wanyoike & Another (2013) eKLR*, *Jane Gachoki Gathecha v. Priscila Nyawira Gitungu & Another (2008) eKLR* among others.)

44. This Court cannot therefore purport to deal with any challenges to the administration of the estate of the deceased. I decline the invitation by the Defendants. This Court should only address itself to the enforcement of the sale agreement. In doing so, it must address two key issues. One, the validity of the Sale Agreement and two, the effect of the transfer of the plot by the 3<sup>rd</sup> Defendant.

45. On the validity of the Sale Agreement, I have carefully looked at the same. It was entered into by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs as Vendors. The 1<sup>st</sup> Plaintiff is the Legal Representative of the estate of the deceased. He executed the Agreement on his own behalf and on behalf of the estate of the deceased.

46. There is no dispute that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are the children of and beneficiaries to the estate of the deceased. There is also no dispute that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are entitled to a share of the estate of the deceased. As said before whether the plot was the share of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs is not for interrogation in this suit.

47. By virtue of the fact that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs were beneficiaries of the estate of the deceased and that the 1<sup>st</sup> Plaintiff was the legal representative of the estate, I then find that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs had the legal capacity to contract. Infact the participation of the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs in the sale signified their respective consents. There is evidence of valid consideration as well.

48. I will now deal with the effect of the transfer of the plot by the 3<sup>rd</sup> Defendant. According to the record the plot was initially registered in the name of the deceased. Upon his death, the 3<sup>rd</sup> Defendant conducted some proceedings and eventually transferred the plot to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 1<sup>st</sup> Defendant was by then an employee of the 3<sup>rd</sup> Defendant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants admitted that the proceedings before the 3<sup>rd</sup> Defendant did not involve the 1<sup>st</sup> Plaintiff who was the legal representative. It is also admitted that the 3<sup>rd</sup> Defendant did not request, obtain and/or consider any succession documents in arriving at their decision.

49. The representatives of the 3<sup>rd</sup> Defendant were aware of the death of the deceased as they dealt with the plot. Their dealings on the plot called for adherence with *inter alia* the **Law of Succession Act**. They however did not do so. They chose to and ignored the law. They dealt with the plot otherwise and by way of impunity. Their actions amounted to intermeddling of the estate under **Section 45** of the **Law of Succession Act**. That is an offence.

50. The effect of the actions and decisions of the Defendants on the plot is that they acted in vain. The transfer of the plot did not have the sanction of the law. It is a nullity. No interest in the plot passed from the deceased to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

51. The second issue for determination is answered in the affirmative.

**(iii) Remedies:**

52. I have already found that the sale of the plot to the 4<sup>th</sup> Plaintiff was valid. The Amended Summons must be allowed. The effect thereof must be to give legal effect to the sale agreement. I note that this dispute has by now been in Court for at least 13 years.

**Disposition:**

53. As I come to the end of this judgment I must highly appreciate the Counsels herein, **Mr. Otieno Willis** and **Mr. Kwanga Mboya**, for their effort and commitment to finalize this longstanding matter within a very short period.

54. I must also apologize for the late delivery of this judgment which was occasioned by being officially out of the station.

55. The upshot of the foregone analysis is that this Court hereby enters judgment for the Plaintiffs against the Defendants, jointly and severally, as follows: -

**(a) A declaration hereby issues that the sale of Plot No. 82 Migori Municipality by Samwel Oler Kichula, Lucas Okoth Kichula, Elisha Ochieng Kichula and the Estate of Philimon Kichula Pondo to Prof. Edward Okong'o Oyugi vide the Agreement for Sale dated 20/10/2001 is valid.**

**(b) A declaration hereby issues that the transfer of Plot No. 82 Migori Municipality by the then Migori Municipal Council from Philimon Kichula Pondo – Deceased to Tobias Onyango Kichula and Mary Kichula is contrary to law.**

**(c) The transfer of Plot No. 82 Migori Municipality by the then Migori Municipal Council from Philimon Kichula Pondo – Deceased to Tobias Onyango Kichula and Mary Kichula is hereby revoked and/or nullified.**

**(d) The County Government of Migori being the successor of Migori Municipal Council shall accordingly rectify its record on Plot No. 82 Migori Municipality and register Prof. Edward Okong’o Oyugi in place of Philimon Kichula Pondo – Deceased.**

**(e) The Defendants shall bear the costs of this suit.**

56. These are the orders of this Court.

**DELIVERED, DATED and SIGNED at MIGORI this 15<sup>th</sup> day of October 2019.**

**A. C. MRIMA**

**JUDGE**

**Judgment delivered in open court and in the presence of: -**

**Mr. Otieno Willis** Counsel instructed by the firm of Messrs. Otieno Ogolla & Co. Associates Advocates for the Plaintiffs.

**Mr. Kwanga Mboya** Counsel instructed by the firm of Messrs. Kwanga Mboya & Company Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

No appearance for the 3<sup>rd</sup> Defendant.

**Evelyne Nyauke** – Court Assistant