

Prayer 2: An order that the register for Land Parcel No. **KISUMU/KORU/111** be rectified by canceling the registration of Defendants as proprietors and rectifying the title to the name of the deceased **NICHOLAS OTIENO**.

Prayer 3: That the Plaintiff (Applicant) be and is hereby declared to be the sole surviving heir and beneficiary of the estate of the deceased **NICHOLAS OTIENO** and entitled to exclusive title and possession of land **Parcel No. KISUMU/KORU/111**, and to transfer the same in her favour.

Prayer 4: Costs of the Application be provided for.

8. The grounds advanced in support posit that the Plaintiff is the administratrix of the late **NICHOLAS OTIENO**; that the late **NICHOLAS OTIENO** owned land **Parcel No. KISUMU/KORU/111** before the land was irregularly and fraudulently transferred to Defendants; that it is necessary to determine whether that transfer should be cancelled and also decide who is the rightful heir; and that the Defendants intended to alienate the land and illegally evict those in possession, including the Plaintiff.
9. The Supporting Affidavit accompanying the Application shows the Plaintiff, who is the deponent, asserting, inter alia, that she is the sole surviving heir to the estate of the late **NICHOLAS OTIENO**; that she obtained letters of administration issued in **Kisumu HCC Succession Cause No. 441/05**; that she occupied the land after the death of Otieno; that some people came claiming the land in year 2005; that she later discovered the Defendants had been registered as the owners of the land; that the transfer of the land to the Defendants was irregular and fraudulent; and that the orders she is seeking are necessary to protect and preserve the estate of the deceased.
10. Four witnesses testified. The Plaintiff's story was essentially similar to what the Supporting Affidavit contains. Additionally, she availed the following exhibits:
 - a) Death Certificate of the deceased (PEX 1).
 - b) Original title deed in deceased name (PEX 2)
 - c) Search copy confirming title was in the name of the deceased (PEX 3)
 - d) Unconfirmed grant to Plaintiff issued on 11/8/2006 (PEX 4).
 - e) Confirmed grant to Plaintiff (PEX 5)
 - f) Notice of intention to remove caution that was placed on the land by Plaintiff (PEX 6a)
 - g) Letter from Plaintiff's counsel objecting to removal of caution (PEX 6b)
 - h) Search Certificate showing the defendants as owners (PEX 7)
 - i) Copy of green card concerning the suit land (PEX 8).
11. PW2 was the Plaintiff's employee and was also the deceased's employee. He talked of having been employed to work in the farm in 1968. He said the farm had never been owned by anybody else.
12. The District Land Registrar, Ngando was PW3. He testified on 28/10/2009. He gave some history of the suit land. It was transferred to the deceased brother of the Plaintiff on 19/2/1999. It was then transferred to Defendants on 23/10/2003. He talked of details of alleged succession by the new owners. But the documents used were missing in the relevant presentation book and Form RL7. These documents normally capture details of what went on. And the documents presented are supposed to appear in the parcel file. The parcel file was also missing. With all these critical details missing, this witness said he couldn't tell how the two Defendants got to be registered owners of the suit land.
13. It appears the Plaintiff's counsel, Mr Orenge, was not leaving anything to chance. Yet another

- land official was called, this time **PW4 – ELIZABETH MAGONGO**. She confirmed what the Land Registrar (PW3) had said viz: the presentation book contained no details about Defendants registration as owners of the suit land.
14. Orengo then made written submissions in which he asserted, inter alia, that the registration of the defendants as owners was irregular and fraudulent and that the Plaintiff was the rightful heir to the estate of her deceased brother, and therefore the rightful owner also of the suit land.
 15. There is no contest in the matter. Nothing is controverted. And from the evidence availed, it appears that something fishy was perpetrated by defendants in collusion with, or connivance of, crooked land officials leading to registration of Defendants as owners of the suit land. The Defendants were said to be registered as owners through the process of succession. But the details of such succession or the necessary succession documents were all missing.
 16. Without much do therefore, the orders sought in the Originating Summons concerning the suit land, and which were also stated in Paragraph 7 of this Judgment, are all granted. The Plaintiff is also to get costs of the suit.

HON. A.K. KANIARU

ENVIRONMENT & LAND - JUDGE

7/5/2015

7/5/2015

A.K. Kaniaru – J

Ogendo John – Cc

Plaintiff – present

Defendant – absent

Orengo for Plaintiff

Interpreter: English/Kiswahili

Court: Judgment read and delivered in open court.

Right of Appeal 30 days.

HON. A.K. KANIARU

ENVIRONMENT & LAND - JUDGE

7/5/2015