



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

LAND 135 OF 2013

HELIDA OMOGA OWINO.....PLAINTIFF

VERSUS

DOMNIC OSINDO.....DEFENDANT

FINAL JUDGMENT

1. By a plaint filed here on 4/6/2013, the Plaintiff - **HELIDA OMOGA OWINO** – prays for various orders against the defendant – **DOMINIC OSINDO** – who has aggrieved her by short changing her name with that of his brother – **OKOYO OSINDO** – in the registration of land parcel No. **SOUTH UGENYA/UMALA/55** (suit land hereafter).
2. The suit land is said to be family and ancestral land originally owned by her husband – **OWINO ALEGO** – in common with the defendant's father – **OLUOCH OLEGO**.
3. During adjudication and subsequent registration, the plaintiff and the defendant's families agreed that the suit land be registered in the names of the plaintiff and the defendant jointly in trust for their respective families. But the defendant stealthily ensured registration of his late brother – **OKOYO OSINDO** – instead of the plaintiff, a fact that the plaintiff came to discover much later.
4. An attempt at rectifying the situation has been met with refusal by the defendant and that has necessitated this suit.
5. The defendant is accused of fraud and conspiracy. He is said to have failed to include the plaintiff in the registration of land contrary to family agreement. He is also accused of conniving with his late brother – **OKOYO OSINDO** to exclude the plaintiff as a co-owner and even going further to sell some portions of that land without the plaintiff's consent. The defendant is said to have betrayed the trust bestowed upon him by the family.
6. The plaintiff avers that she is entitled to be registered as a co-owner and, in the alternative, her long uninterrupted occupation and possession has made her an adverse possessor entitled to be registered as a legal owner.
7. The plaintiff wants an order directing the District Land Registrar, Ugenya/Ugunja District to correct the entries concerning proprietorship of land parcel NO. **SOUTH UGENYA/UMALA/55** to include the plaintiff. Alternatively, the court should declare that the plaintiff is an adverse possessor and direct the said Registrar to issue a title in favour of the plaintiff. The defendant is also sought to be enjoined, whether by himself, his servants, agents, employees or anybody else from disposing off, selling, alienating, charging or interfering with ownership, possession or occupation of the suit land or any portions thereof. The plaintiff also wants costs of the suit.

8. It appears clear that the defendant was served. There is an affidavit of service dated 22/8/2013 and filed on 29/10/2013 explaining how service was done. The defendant however didn't enter appearance and/or file defence. This led to a request for entry of interlocutory judgment and such judgment was entered on 29/10/2013.

9. The defendant has even appeared in Court, one such appearance being on 12/3/2014, but inspite of various chances given to respond to the suit, no response was made at all.

10. This matter then came for hearing on 1/7/2014 and, there being no action from defendant's side, proceeded by way of formal proof.

11. The plaintiff testified as PW1. She gave her evidence which was generally similar to what is contained in the plaint and in her statement dated 3/6/2014 and filed here on 4/6/2013. In short, she reiterated that the suit land was originally owned by her late husband and the father of the defendant. During adjudication, it was agreed that she and the defendant be registered as owners in trust for their respective families. But the defendant secretly short changed her and ensured registration of his brother instead.

12. There was P.W.2, who gave a similar story and also mentioned that the defendant, when approached, has not been co-operative in trying to rectify the situation.

13. In the course of hearing the matter, the following exhibits were availed:

- **Search copy showing registration of the defendant and his brother as proprietor's of the suit land (Plf Ex No.1)**

- **Caution placed on the land (Plf Ex No.2)**

- **Demand letter to the defendant from plaintiff's advocate (plf Ex No.3)**

- **Letter given to the plaintiff by the area chief to take to Lands office when what the defendant had done came to light (plf Ex No.4)**

- **Letter from the Lands office given to the plaintiff to take to the area chief (Plf Ex No.5)**

14. The plaintiff's suit is uncontroverted. It is clear the defendant was served. He even appeared in Court on 12/3/2014 and intimated his desire to make a response to the suit. The matter was then given a mention date of 14/5/2014. The defendant was supposed to have made a response then. But he didn't make a response and didn't even appear. The Court then put down the matter for formal proof on 1/7/2014.

15. The plaintiff demonstrated well how she was aggrieved by the defendant. And there is no denial of this by the defendant. It appears clear that the plaintiff was to be registered as a co-owner of the suit land. But the defendant ensured that things were done differently. The court accepts her story. It is necessary therefore to grant the prayers she is seeking. She is therefore granted prayers (a) (c) and (d) in the plaint. These same prayers are stated at paragraph 7 of this judgment.

A.K. KANIARU – JUDGE

7/10/2014

7/10/2014

A.K Kaniaru – Judge

Dianga G. - Court clerk

No party present

Interpretation: English/Kiswahili

COURT: Final judgment read and delivered in open COURT. Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

7/10/2014