

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC (O.S) NO. E016 OF 2023**

**IN THE MATTER OF SECTION 91 (2) OF THE LAND REGISTRATION**

**ACT**

**AND**

**IN THE MATTER OF ORDER 37 RULE 11 OF THE CIVIL PROCEDURE**

**RULES, 2010**

**BETWEEN**

**ANNE ADHIAMBO OMOLLO ..... APPLICANT**

**VERSUS**

**JARED OKELLO BOLLO ..... RESPONDENT**

**J U D G E M E N T**

Vide the undated Originating Summons filed herein on 8<sup>th</sup> May, 2023, Anne Adhiambo Omollo the Plaintiff/Applicant sought for orders that;

- (a) it be declared and decreed that the property known as Land Title No. KISUMU/OJOLA/4635 together with any development thereon which property albeit registered in the names of the Applicant and the Respondent as is more

specifically shown in the annexed Supporting Affidavit belongs to the Applicant.

(b) This honourable court be pleased to sever the common ownership of the property known as land title No. KISUMU/OJOLA/4635 between the Applicant and the Respondent and compel the Land Registrar, Kisumu to rectify the register and expunge the name of the Respondent from the proprietorship section.

(c) The costs of the summons be provided for.

The Originating Summons was based on the grounds that sometime in the year 2006 the Applicant and the Respondent fell in love and started cohabiting with the intention of getting married in the future. That sometimes in 2011, the Applicant purchased a piece of property known as KISUMU/OJOLA/4635 from one Joseph Odembo at a consideration of Kshs.200,000/- following her industry and determination to secure the basic needs and future of her children and family. That the purchase price for buying the said property came from the Applicant's wages and loan which she paid from her salary at Kshs.100,000/- deposit paid on April 5, 2011, Kshs.8000 paid on December 21, 2011, Kshs.10,000 paid on January 21, 2013,

Kshs.7000 paid on February 26, 2013 and Kshs.75,000/- paid on March 2013.

That during the subsistence of the relationship between the Applicant and the Respondent, the Respondent cheated on the Applicant, the Respondent was an irresponsible and cruel father to the children and kicked the Applicant and the children from their rented house in Nyalenda sometime in 2017 August leading to a breakup at which time the parties had five (5) children.

That the Applicant intends to put up a house on the suit property and needs to sell half of it to get funds for putting up the house for the children.

The Respondent has ignored demands that he executes a consent to have his name expunged from the register. That the Respondent did not contribute in purchase of the property and the Applicant only transferred the property in their joint names in the mistaken belief that the Respondent would one day marry her yet the Respondent had no such intention.

That the ties between the parties having been broken, there is no need for the continued registration of the property in both names. That section 91 of the Land Registration Act makes a presumption of common ownership in equal shares of property registered

between two or more people and Order 37 Rule 11 Civil Procedure Rules makes provision on determination of ownership of the suit property.

The Originating Summons was supported by the averment in the Supporting Affidavit and the annexures thereto.

In response to the Originating Summons, the Respondent filed a Memorandum of Appearance dated 19<sup>th</sup> May, 2023 and a Replying Affidavit which he swore on 24<sup>th</sup> December, 2023. He deposed that they started to cohabit with the Applicant in the year 2006 and later in the same year solemnized their union according to Luo customary law. That he took in as his, a child whom the Applicant had with a Mr. Wanga deceased, to whom the Applicant was previously married and that together with the Applicant, they were blessed with 4 children.

That he took a loan of Kshs.100,000 from INDICOSE SACCO SOCIETY where he was working as the Chief Executive Officer which he paid as 1<sup>st</sup> instalment for purchase of the suit land whose purchase price was Kshs.200,000/-.

That the balance of the purchase price and costs of transfer of the land were all borne by himself and were paid in cash.

That the Applicant willingly left the matrimonial home in 2017 with all the 5 children with intention of travelling out of the country.

That she later relocated to Tanzania and returned to Kenya in 2018.

That the matrimonial property ought to be preserved to allow the appropriate court arrive at a just determination on the question of division of matrimonial property.

The Respondent urged the court to dismiss the suit.

### The evidence

The Originating Summons was disposed of by way of viva voce evidence. The Plaintiff/Applicant testified as PW1. She adopted the contents of the Supporting Affidavit as her evidence. She produced a bank statement and demand letter dated 16<sup>th</sup> December, 2022 as exhibits.

She stated that she is the one who paid for the land.

The Defendant testified as DW1. He started that he bought the land in the presence of the chief. He produced documents namely; copy of bank statement, down payment agreement and copy of acknowledgement.

He called one witness, DW2 who stated that the parties herein bought the land together. That she is the one who looked for the

land and that she was present when the first instalment of the purchase price was paid.

### Submissions

Written submissions dated 6<sup>th</sup> November 2025 were filed by Juliet Dima & Associates Advocates for the applicant. Written submissions dated 29<sup>th</sup> May, 2025 were filed by the Respondent. I have read and taken the submissions into account.

### Determination

Order 37 Rule 11 of the Civil Procedure Rules pursuant to which the Originating Summons was brought provides that;

“Any person claiming to be interested under a deed, will or other written instruments, may apply in chambers by Originating Summons for the determination of any question of construction arising under and for a declaration of the rights of the person interested.”

Section 91 of the Land Registration Act provides for the meaning and incidents of co-tenancies.

The substantive relief sought is that the name of the Respondent be removed from the title/register of the suit land so that the land may belong to the Applicant alone.

Each of the parties claims to have solely bought the land. They each produced documents as evidence of payment of the purchase price.

The burden of prove that the suit land is her sole property lay with the Applicant under the provisions of sections 107 to 109 of the Evidence Act. I have considered the evidence placed before court and find that the Applicant has not discharged the burden. The applicant has not proved her claim on a balance of probabilities. The applicant has not proved that she bought the suit land alone and has not demonstrated the grounds for termination of joint tenancy

The dispute appears to be a matrimonial cause which ought to have been instituted in the family court.

The result is that the suit is hereby dismissed. Since the parties are related, each party to bear own costs of the case.

Orders accordingly.

**Judgement dated and signed at Kisumu and delivered virtually this 20<sup>th</sup> day of November, 2025.**

**E. ASATI,  
JUDGE.**

**In the presence of:**

Maureen - Court Assistant.

Atieno for the Applicant

N/A for the Respondent.