



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MIGORI

ELC CASE NO. 841 OF 2017

KEPHAS OCHIENG MWITA

(suing as Administrator of the estate of

PAULUS NYAPARA OUYA.....PLAINTIFF

VERSUS

MIGORI COUNTY LAND MANAGEMENT BOARD.....1ST DEFENDANT

COUNTY GOVERNMENT OF MIGORI.....2ND DEFENDANT

LAND REGISTRAR MIGORI.....3RD DEFENDANT

JUDGMENT

1. In a plaint dated 3/10/17, the plaintiff represented by learned counsel, Mr. Keraro Marwa, sued the defendants for the following orders:-

a) Declaration that the caution registered by the 1st defendant on the land parcel No. SUNA EAST/WASWETA 1/537 (hereinafter referred to as the suit property) was unjustified and unwarranted.

b) An order directing the 3rd defendant to remove the caution filed on 7th August, 2015.

c) Costs of this suit to be borne by the defendants.

2. The plaintiff's claim is that he is the administrator of the estate of PAULUS NYAPARA OUYA (deceased) who is the registered owner of the suit property. On or about 7th August, 2015, the 1st defendant registered a caution on the title to the suit property under Section 71 of the Land Registration Act, 2012. The plaintiff (PW1) discovered the caution in September, 2017 and asked the Land Registrar to remove it. However, the Registrar refused and insisted that PW1 must get a court order for its removal. PW1 filed this suit for the reliefs sought to enable him transfer and distribute the estate to the beneficiaries.

3. The defendants were duly served on 10th October, 2017 as revealed in an affidavit of service sworn on 7th November, 2017 by Peter Ochara Anam, a duly licenced court process server. They neither entered

appearance nor filed statements of defence within the prescribed period of time or at all.

4. I have studied the plaint and the evidence of the plaintiff namely Kephias Ochieng Mwita (PW 1). Going by the holding in **Great Lakes Transport Co. (U) Ltd-vs-KRA (2009) KLR 720**, the issues for determination flowing from the pleadings are whether;-

- a) PW1 is entitled to the suit property,
- b) a caution or any restriction was lodged on the suit property,
- c) PW1 is entitled to the reliefs sought in the plaint.

5. PW1 testified and he relied on his statement dated 3rd October, 2017. He stated, inter alia;

“ The 1st and 2nd defendants did lodge a caution on 7th August, 2015 in respect of L.R No. Suna East/Wasweta 1/537 in which I am the proprietor’s estate administrator.”

6. The testimony of PW1 was that he was the administrator of the estate of the deceased. He fortified his evidence by a certificate of confirmation of grant issued on 7th September, 2017 in Migori CMC Succession cause No. 50 of 2017 (P. Exhibit 1).

7. A certificate of official search dated 24th July, 2017 in respect of the suit property (Exhibit 2) shows that a restriction was lodged on 7th August, 2015 in respect of the suit property. PW1 identified and produced P.Exhibits 1 , 2 and a demand letter dated 11th September, 2017 to the 1st and 2nd defendants (P. Exhibit 3) in evidence.

8. I find useful the evidence of PW1 which is in tandem with the contents of the plaint. PW1 has powers over the estate of the deceased including the suit property as disclosed in P.Exhibit1. There is a restriction on the suit property as shown on P.Exhibit 2 which has affected PW1. Under **sections 73 (1) and 78 (2) of the Land Registration, Act 2012**, this court has the discretion to remove a caution and a restriction respectively.

9. PW1 has proved that he is the administrator of, among others, the suit property. His evidence is cogent, unchallenged, merited and he is entitled to reliefs sought in the plaint. He has proved his claim against the defendants, jointly and severally on a balance of probability

10. In the result, I enter judgment for the plaintiff against the defendants jointly and severally in terms of orders (a), (b) and (c) sought in the plaint dated 3rd October 2017.

11. Orders accordingly.

DELIVERED, SIGNED and DATED in open court at MIGORI this **29th day of January 2018.**

G. M. A. ONGONDO

JUDGE

In the presence of;

Kerario Marwa, learned counsel for the plaintiff

Court Assistant - Tom

G. M. A. ONGONDO

JUDGE