



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MIGORI

ELC NO. 208 OF 2017

(Formerly KISII ELC CASE 263 OF 2016)

LEONIDA ODOYO OWINDE.....PLAINTIFF/APPLICANT

VERSUS

JOSHUA OCHIENG SIGERA.....1ST DEFENDANT/RESPONDENT

MICHAEL OTIENO SIGERA.....2ND DEFENDANT/RESPONDENT

JUDGMENT

1. On 2nd September 2015, the plaintiff through Agure Odero & Co. advocates filed this suit by way of a plaint dated 1st September 2016. She is seeking the followings reliefs :-

i. An order to nullify title deed LR NO. SUNA WEST/WASWETA 11/291 registered in the names of the 1st defendant Joshua Ochieng Sigera pending filing of proper Succession cause in the names of Leonida Adoyo Owinde, Joshua Ochieng Sigera and Micheal Otieno Sigera as this court so orders.

ii. An order for injunction restraining the defendants, their agents/servants from interfering with the plaintiff peaceful stay viz apportion measuring 4 hectares albeit LR. NO. SUNA WEST/WASWETA 11/291, (hereinafter referred to as the suit land).

iii. Cost of the suit.

2. The plaintiff claimed in her plaint that the defendants are her step brothers and that she has been staying on and cultivating the suit land since 1995. Her father had betrothed the suit land to her since her mother sired no sons and since she was the only child in the 1st house (1st wife) while the 2nd house (2nd wife) had the defendants. In total disregard to the plaintiff, the defendants did secure a title deed in respect of the suit land.

3. The plaintiff further claimed that the defendants did not do Succession to the estate of the deceased, William **Sigera Osita**. That the defendants colluded with the County Land Registry and fraudulently transferred the whole of the suit land into the name of the 1st defendant as shown on **certificate of official Search dated 2/8/2016**. She also stated that the defendants notified the plaintiff to vacate the suit land and remove all the permanent structures on the land occupied by the plaintiff in total disregard to her constitutional rights and the blessing of her father. The plaintiff pleaded particulars of fraud at paragraph 9, thus :-

1) Defendant executing transfer without doing succession pursuant to cap 160 laws of Kenya.

2) Failing to involve the plaintiff in the exercise of transferring.

3) Threatening to remove the plaintiff despite constitutional right and being a beneficiary by virtue of being a legal daughter to WILLIAM SIGERA OSITA (Deceased).

4) That there is no pending suit in any court over the same cause of action.

5) This honorable court has jurisdiction to hear and determine this matter.

4. The defendants were duly served on 13th September as shown on affidavit of service sworn on 31/9/2017 by Juma Otindo, a duly authorized Process Server. They filed no defence within the prescribed period of time or at all hence hearing of the suit proceeded ex parte on 20/2/2018. PW1 adduced evidence and produced certificates of official search dated 2/8/16 and 30/8/2016 (P.Exhibit 1a & b respectively) and chief's letter dated 12/8/2016 (P.Exhibit 2), in support of his claim.

5. There were no submissions by Mr. Agure Odera, learned counsel for the plaintiff.

6. I have considered the entire plaint, and evidence of PW1. In the case of **Great Lakes Transport Co. Ltd –vs- KRA (2009) KLR 720**, the court noted that issues for determination in a suit generally flow from pleadings or as framed by the parties. The issues extracted from the pleadings for determination are :-

- (a) Who is entitled to the ownership of the suit land?
- (b) Is fraud disclosed against the defendants ?
- (c) Is the plaintiff entitled to the reliefs sought in the plaint?

7. It is the duty of the court to only rely on the evidence before it, see **Great Lakes case** (supra).

8. PW1 testified that she lives on the suit land of her late father who gave her four (4) ha or 10 acres of the suit land. She stated, interalia:-

“Prior to his death, my father had authorized and directed that I inherit 10 acres of the suit land ”

9. PW 1 further testified that :-

“On 2/8/2016, the defendants chased me from my portion of the suit land. No succession was done on the estate. The defendants are selling the land .”(Emphasis added)

10. I take into account the evidence of PW1 including P.Exhibit 1 to 2 which reveal that the suit land is in the name of 1st defendant. The evidence of PW1 further shows that the defendants never took letters of Administration in respect of the Estate of their late father and there is a dispute on the suit land. There was a restriction lodged on 3rd August 2016, under **Section 76 of Land Registration Act, 2012**. The testimony of PW1 has proved the particulars of fraud against the defendants as pleaded in the plaint. The title deed issued to 1st defendant was clearly fraudulent.

11. According to **Article 1 of the Universal Declaration of Human Rights (1948)**, all human being are born freed equal in dignity and rights. It is the relevant international law that Kenya ratified and it forms part of the law of Kenya by virtue of **Article 2 (5) of the Constitution of Kenya, 2010** . I would take judicial notice of that international convention in my resolution of the dispute in this matter as stated by Justice Musamali in **Longwe –v- International Hotels (1993) 4 LRC 221**.

12. Constitution right to human dignity and the right to equality and freedom from discrimination under **Sections 27 and 28 of the Constitution of Kenya, 2010**, are useful and applicable in the instant suit. Previously **Section 82 of the Constitution of Kenya (repealed)** outlawed discrimination on grounds of sex. In that regard PW1 is entitled to the suit land which was bequeathed to her by her late father, **William Sigera Osita**.

13. In **Mary Rono –vs- Jane Rono (2008) 1 KLR (G & F) 803** the court applied **Sections 27, 28, and 40** of the Law of Succession Act (**Cap 160**). It was held, interalia;-

“ It is also undisputed fact that the deceased treated all his children equally and never discriminated between them on account of sex” (Emphasis provided) .

14. The plaintiff's evidence is uncontroverted and unchallenged. She has proved her claim against the defendants jointly and severally on a balance of probability.

15. A fortiori, I enter Judgment for the plaintiff against the defendants jointly and severally for an order of nullification of title, a permanent injunction and costs of the suit as sought in her plaint dated 1/9/2016.

DELIVERED, SIGNED and DATED in open court at MIGORI this 13th day of **MARCH 2018**.

G.M.A. ONGONDO

JUDGE

In presence of :-

Mr. Agure Odera, learned counsel for the plaintiff

Tom Maurice – Court Assistant

G.M.A. ONGONDO

JUDGE