



Oseko (Suing as a personal representative of Josephat Oseko Momanyi or Momanyi Oseko) v Estate of Benson Nyasimi Momanyi & 3 others; Momanyi (Interested Party) (Environment & Land Case E004 of 2023) [2024] KEELC 97 (KLR) (23 January 2024) (Judgment)

Neutral citation: [2024] KEELC 97 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E004 OF 2023
JM KAMAU, J
JANUARY 23, 2024**

BETWEEN

ROBERT KEBASO OSEKO (SUING AS A PERSONAL REPRESENTATIVE OF JOSEPHAT OSEKO MOMANYI OR MOMANYI OSEKO) PLAINTIFF

AND

**THE ESTATE OF BENSON NYASIMI MOMANYI 1ST DEFENDANT
LAND REGISTRAR, NYAMIRA COUNTY LAND REGISTRY 2ND
DEFENDANT**

**THE ATTORNEY GENERAL 3RD DEFENDANT
KINENI FARMERS COOPERATIVE SOCIETY 4TH DEFENDANT**

AND

ERICK AGWATA MOMANYI INTERESTED PARTY

JUDGMENT

1. This Suit was commenced by a Plaint dated 30th March 2023 for the following Reliefs:
 - a. A holding and a finding that Parcel Title No. 67 in Kineni -Isoge Settlement Scheme approximately 40 hectares located in Nyamira County was fraudulently registered in the name of Benson Nyasimi Momanyi by the Defendants.
 - b. An order does issue cancelling the purported registration of Parcel Title No. 67 in Kineni-Isoge Settlement Scheme approximately 40 hectares located in Nyamira County registered in the name of the late Benson Nyasimi Momanyi.



- c. An order does issue directing the 2nd Defendant to register Parcel Title No. 67 in Kineni-Isoge Settlement Scheme approximately 40 hectares located in Nyamira County in the name the Plaintiff herein to hold it in trust for the estate of Momanyi Oseko or Josephat Oseko Momanyi.
 - d. An order does issue that the Director of Criminal Investigation directing him to carry out investigation and the land fraud herein and take the appropriate actions thereafter.
 - e. An Eviction order does issue to remove of intruders scouting on the suit property.
 - f. Costs of suit and interest.
 - g. Any other order that the Honourable court may deem fit and just to grant.
2. There were Defenses filed to deny the claims in the Suit followed by a Reply thereto.
 3. Contemporaneously to the Plaint, an Application for temporary injunction to preserve the suit property was made and granted. The suit was then set down for Hearing.
 4. Before the Hearing of the suit, 3 sons to the late Momanyi Oseko viz. Erick Agwata Momanyi, Tom Mong'are Momanyi and Patrick Ondieki Oseko (who was queuing at the Registry to file his Application for leave to be joined) applied to be joined as Interested parties. Before the Hearing started, a number of fruitful and prolific admissions took place and the Court found it unnecessary to proceed with the oral Hearing of the Suit.
 5. As has been admitted by all the parties herein, the suit land L.R. No. Isoge Settlement Scheme/Kineni Block 1/67 is registered in the name of the late Momanyi Oseko who died on 2/5/2008. Momanyi Oseko was the father to the Plaintiff's father, Josephat Oseko Momanyi who died on 12/1/2016. The parties also agree that the suit land was registered in the name of the late Benson Nyasimi Momanyi who died on 20/1/2022 to hold the same in trust for his father Momanyi Oseko. Save for the ad litem Grant issued to the Plaintiff herein for purposes of instituting this suit, the 3 Estates mentioned above remain unadministered. In the premises, this court orders the cancellation of the Title Deed for Isoge Settlement Scheme/Kineni Block 1/67 and orders further that the land be registered in the name of Momanyi Oseko(Deceased), pending the succession of the Estate of the said Momanyi Oseko.
 6. In addition, I order that until the succession process of the Estate of the late Momanyi Oseko is finalized, there should be no intermeddling with the suit land. These Orders dispose of this suit and I wish to appreciate all the Counsel and the parties herein for being honest, candid and truthful. There shall be no orders as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 23RD DAY OF JANUARY 2024.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: - Brenda

Mr. Muchiri and Mr. Mokuia for the Plaintiff.

Mr. Mariaria for the 4C Defendant.

Mr. Nyangáu for the Interested party.



Ms Oduru for the intended Interested Party.

Mr. Ndiritu for the 2nd and 3rd Defendants.

