



**REPUBLIC OF KENYA**

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

**ELC CASE NO.82 OF 2012**

**IN THE MATTER OF AN APPLICATION DECLARATION OF EXTINCTION OF THE INTERESTS AND RIGHTS OF REGISTERED PROPRIETOR AND OWNER APOLO OLIECH SEWE A.K.A GORDON APOLLO OLIECH IN ALL THAT PARCEL OF LAND KNOWN A SIAYA/NYAJUOK/239 AND REGISTRATION OF THE SAME IN THE NAME OF PLAINTIFF/APPLICANT.**

**JOICE OPIYO MUGWALA.....PLAINTIFF/APPLICANT**

**VERSUS**

**EMMANUEL ISAIYA OTIENO OLIECH.....DEFENDANT/RESPONDENT**

**(Sued as the legal administrator of the estate of Apolo Oliech Sewe A.K.A Gordorn Apollo Oliech)**

**JUDGMENT**

1. **Joice Opiyo Mugwala**, the Plaintiff, commenced this claim against **Emmanuel Isaiya Otieno Oliech**, the Defendant, sued as the legal administrator of the estate of **Apolo Oliech Sewe A.K.A Gordorn Apollo Oliech**, through the originating summons dated 12<sup>th</sup> April 2013. The Plaintiff seeks to have the land parcel **Siaya/Nyajuok/239** registered in her name by virtue of adverse possession for having been in actual occupation and possession of the said land peacefully and uninterrupted for more than 12 years. The Defendant was served with the originating summons and affidavit of service sworn by Maxwell Oluoch Ogonda on 6<sup>th</sup> March 2014 filed but did not enter appearance or file any reply.

2. The directions converting the originating summons and supporting affidavit were taken on 20<sup>th</sup> January 2015 and hearing commenced on the 15<sup>th</sup> November 2016. The Plaintiff testified as PW1 and told the court that she started staying on land parcel **Siaya/Nyajuok/239** when she got married in 1995. That the land is registered in the names of Gordon Oliech also known as Apollo Oliech who is father to the Defendant. That the Defendant and his late father have never used the land. That she had filed **Siaya Land Dispute No.77 of 1990** against the late **Apollo Oliech** over the said land and produced a copy of the proceedings. The land dispute proceedings shows that the parties were advised to come to the High Court possibly for lack of jurisdiction. The Plaintiff also called Peter **Omondi Oriedi**, **Henry Ochieng Ogore** and **Paul Onyango Okinyo**, who testified as PW2 to PW4 respectively, in support of the Plaintiff's claim to the land.

3. The following are the issues for the courts determination.'

a) Whether the Plaintiff has been in exclusive, peaceful occupation and possession of the suit land for more than 12 years, and if so, whether the title of the registered proprietor has been extinguished.

4. The court has considered the pleadings filed by the Plaintiff, affidavit and oral evidence tendered and come to the following determinations;

a) That the Plaintiff has established that she had lived and cultivated on the land that was later registered as **Siaya/Nyajuok/239** since her marriage in 1955. That her late husband and mother in law, and other family members have all along occupied and possessed that land without any interruption from anybody, including the registered proprietor namely, **Apolo Oliech Sewe alias Gordon Apollo Oliech** to the date of filing this suit.

b) That the copy of the green card or register and certificate of official search for land parcel **Siaya/Nyajuok/239** that were produced as exhibits shows that the land was first registered on the 28<sup>th</sup> August 1990 in the name of **Apolo Oliech Sewe**, who later change the name to **Gordon Apollo Oliech** on the 14<sup>th</sup> September 2010.

c) That the Defendant did not enter appearance or file any replying affidavit or defence in this suit and the Plaintiff's averments and evidence on matters of facts remains unchallenged.

d) That the Defendant was appointed administrator of the estate of **Gordon Apollo Oliech alias Apolo Oliech Sewe** on 4<sup>th</sup> October 2012 in Siaya S.R.M. Succession Cause No.37 of 2012 as confirmed through the copy of the grant produced as exhibit by the Plaintiff. The grant and the copy of the death certificate No.234837 shows that the deceased died on the 14<sup>th</sup> June 2011.

e) That neither the said deceased nor the Defendant have ever used the land parcel Siaya/Nyajuok/239 or taken any legal steps to reassert their right over the land physically from the Plaintiff or, her family for over 12 years before the filing of this suit.

f) That the title of the late Gordon Apollo Oliech alias Apolo Oliech Sewe to land parcel **Siaya/Nyajuok/239**, to which he became the registered proprietor on the 14<sup>th</sup> September 1990 got extinguished at the expiry of 12 years from that date in terms of **Section 7, and 38 of the Limitation of Actions Act Chapter 22 of Laws of Kenya**.

g) That the Plaintiff became entitled to be registered as the proprietor of the said land at the expiry of 12 years from 14<sup>th</sup> September 1990 which was by or on 15<sup>th</sup> September 2002 and should be so registered.

5. That flowing from the foregoing, the court finds that the Plaintiff has proved her case on a balance of probabilities and enters judgment for her against the defendant as follows:

a) That the title of the late **Gordon Apollo Oliech alias Apolo Oliech Sewe** to land parcel **Siaya/Nyajuok/239** is hereby declared extinguished in favour of the Plaintiff in terms of **Sections 7 and 38 of the Limitation of Actions Act, Chapter 22 Laws of Kenya**.

b) That the Defendant, as administrator of the estate of the late Gordon Apollo Oliech alias Apolo Oliech Sewe, is ordered to transfer land parcel **Siaya/Nyajuok/239** to the name of **Joice Opiyo Mugwala**, the Plaintiff forthwith.

c) That should the Defendant decline to execute any of the documents necessary to give effect to (b) above, the Deputy Registrar is hereby authorized to execute any such document.

d) The plaintiff will bear his own costs as the Defendant did not contest this suit.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 08<sup>TH</sup> DAY OF MARCH 2017**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Ogonda for Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**8/3/2017**

8/3/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr Ogonda for Plaintiff/Applicant

Court: the judgment dated and delivered in open court in presence of Mr. Ogonda for the Plaintiff/Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**8/3/2017**