



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 344 OF 2014**

**JOAN MOLUVE MUHINDI.....PLAINTIFF**

**VERSUS**

**JOHN OBAMO MUHINDI.....DEFENDANT**

**JUDGEMENT**

The plaintiff's claim against the defendant is for an eviction order to be issued by the Court to force the defendant to vacate the plaintiff's land parcel NO. TIRIKI/GISAMBAI/645 and settle on his father's L/P NO. TIRIKI/GISAMBAI/966 left to him. It is the plaintiff's case the late husband of the plaintiff took the defendant after the death of his father Shem Muhindi and took care of the defendant by educating him and gave him a job after he completed his education. The plaintiff states that late husband allowed the defendant to construct a house in their home as he was now an adult and needed a house as he wait to settle on his late father's land TIRIKI/GISAMBAI/966 but the defendant has now refused to vacate the plaintiff's land despite several demand made by the plaintiff.

PW1, testified that, she stays on L.P. NO. TIRIKI/GISAMBAI/645 which she is the title holder after acquiring the same through a succession, she produced the certificate of confirmation of grant, gazette notice, green card and title as PEx1 to 4). Her late husband took the defendant while he was still young after his father Shem Muhindi's death. He educated him and even gave him a job. Since he was now a big boy her husband allowed him to put up a house for himself on their compound – which house he is staying in to date. He is now an adult and she tried to tell him to go and settle on his late father is L.P. No. TIRIKI/GISAMBAI/966 and vacate her land but he has refused completely. PW2, Ruth Mbone Muhindi, who is the plaintiff's sister in law of corroborated PW1's evidence.

DW1 stated that, the two (2) parcel of land i.e. L.P. No. TIRIKI/GISAMBAI/645 and TIRIKI/GISAMBAI/966 belonged to his late grand-father Zacharia Muhindi Obamo who passed on in the year 1980 intestate and the plaintiff late husband secretly took out succession proceedings without other family and beneficiary consent and had the subject land changed into his names in the year 1989. That it's clear on the face of the plaintiff documents that it was resolved that L.P. No. TIRIKI/GISAMBAI/645 be divided into two (2) equal shares which the plaintiff did not challenge in any competent court of law despite her allegation that she is the proprietor of the subject land and the plaintiff is put to strict proof. The defendant denies that he agreed to move to L.P. No. TIRIKI/GISAMBAI/966 which is his late father share. The defendant contents that he interred the remains of his late father and mother in L.P. No. TIRIKI/GISAMBAI/645 without any interference and/or interruption from the plaintiff and/or anybody whatsoever.

DW2 a village elder, testified that the plaintiff is the wife of the late Alfayo Muhindi and the defendant

the son of the late Shem Maluha. That Shem Maluha and Alfayo Muhindi were the sons of the late Zacharia Muhindi Obama who was the proprietor of L.P.No. TIRIKI/GISAMBAI/645 & 966 respectively. That the remains of the defendant's father and mother were interred in L.P. No. TIRIKI/GISAMBAI/645 without any objection interruption and/or interference from the plaintiff and/or anybody whatsoever. That when the defendant father passed on in 1970 he was aged 2 months with no say over his father's share and he has peacefully stayed on L.P. No. TIRIKI/GISAMBAI/645 openly, exclusively continuously without fraud, force or secrecy. That on the 18<sup>th</sup> February 2012 he presided over a family meeting for commemoration and sharing out the assets of the late Zacharia Muhindi Obama and it was resolved and agreed that the two (2) parcel of land to wit L.P. TIRIKI/GISAMBAI/645 and 966 be subdivided into two (2) equal shares amongst his two (2) sons namely the late Shem Maluha and the late Alfayo Muhindi and nobody has challenged the same.

This court has carefully considered both the plaintiff's and the defendant's case and the submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

***“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”***

Section 26 (1) of the Land Registration Act states as follows:

***“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –***

***a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

This court in considering this matter referred to the case of **Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

**-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.**

Looking at the facts of this case it is not disputed that the plaintiff is the registered proprietor of on L.P. NO. TIRIKI/GISAMBAI/645 after acquiring the same through a succession process, she produced the certificate of confirmation of grant, gazette notice, green card and title as PEx1 to 4). Her late husband she states took the defendant while he was still young after his father Shem Muhindi's death. He educated him and gave him a job. Since he was now a big her husband allowed him to put up a house for himself on their compound – which house he is staying in to date. He is now an adult and she tried to tell him to go and settle on his late father's L.P. No. TIRIKI/GISAMBAI/966 and vacate her land but he has refused. I see no evidence of fraud or misrepresentation to which the person is proved to be a party; or that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. DW2's evidence that, on the 18<sup>th</sup> February 2012 he presided over a family meeting for commemoration and sharing out the assets of the late Zacharia Muhindi Obama and it was resolved and agreed that the two (2) parcel of land to wit L.P. TIRIKI/GISAMBAI/645 and 966 be subdivided into two (2) equal shares amongst his two (2) sons namely the late Shem Maluha and the late Alfayo Muhindi, was never consented to by the plaintiff and she did not endorse the same. Indeed he acknowledges that originally

L.P. TIRIKI/GISAMBAI/645 belonged to the plaintiff's husband. In the circumstances, I find that the plaintiff has proved her case on a balance of probabilities and I enter judgment in her favour. I proceed to make the following orders;

1. The defendant is given six (6) months to vacate and in default an eviction order to issue forthwith to him for the suit land L.P. TIRIKI/GISAMBAI/645.
2. Costs of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 11<sup>TH</sup> DAY OF OCTOBER 2017.**

**N.A. MATHEKA**

**JUDGE**