



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.160 OF 2015**

**JOSEPH OMOLLO ODAM .....1<sup>ST</sup> PLAINTIFF**

**RICHARD OMOLO OYOO.....2<sup>ND</sup> PLAINTIFF**

**Suing as the administrator of the estate of KONEL ODAM OMOLLO (DECEASED)**

**VERSUS**

**JILL AWINO ODINGO.....1<sup>ST</sup> DEFENDANT**

**DOROTHY NEREA OPONDO.....2<sup>ND</sup> DEFENDANT**

**FREDRICK ADIWOUR RALAK.....3<sup>RD</sup> DEFENDANT**

**JOHN ODHIAMBO AKINY.....4<sup>TH</sup> DEFENDANT**

**CHHAGANBHAI MOTIBHAI PATEL.....5<sup>TH</sup> DEFENDANT**

**NICHOLAS RANDA OWANO OMBIJA.....6<sup>TH</sup> DEFENDANT**

**JOHN ROBERT ODHIAMBO.....7<sup>TH</sup> DEFENDANT**

**JOHN ALEX GENGA.....8<sup>TH</sup> DEFENDANT**

**CHARLES OKEYO OGOLLA.....9<sup>TH</sup> DEFENDANT**

**HAPPY TWINS FREIGHT FORWARDERS LTD.....10<sup>TH</sup> DEFENDANT**

**DR. THOMAS OTIENO OBAT KWASA.....11<sup>TH</sup> DEFENDANT**

**COUNTY LAND REGISTRAR , KISUMU.....12<sup>TH</sup> DEFENDANT**

**RULING**

1. **Nicholas Randa Owano Ombija**, the 6<sup>th</sup> Defendant, vide notice of motion dated 2<sup>nd</sup> May 2017, seeks to have the plaint struck out and costs be provided for. The application is based on the six grounds on its face and is supported by the affidavit sworn by Nicholas Randa Owano Ombija on the 2<sup>nd</sup> May 2017. The summary of the grounds is that the 6<sup>th</sup> Defendant had acquired land parcel **Kisumu/Konya/3482**

from **Jill Awino Odingo**, the 1<sup>st</sup> Defendant and under **Section 39 (1) of the Registered Land Act** (repealed), he was not obligated to inquire into the prior transactions over that land as the deal was for valuable consideration. That the Plaintiffs have failed to disclose any cause of action against the Defendants. The 6<sup>th</sup> Defendant depones to among others that he sold the land to a third party, who has not been enjoined in the proceedings, in 2014.

2. The application is opposed by Joseph Omollo Odam, (suing as the Administrator of the estate of Konel Odam Omollo, deceased), and Richard Omollo Oyoo, the Plaintiffs, through the replying affidavit sworn by the 2<sup>nd</sup> Plaintiff on the 16<sup>th</sup> August 2017. The 2<sup>nd</sup> Plaintiff depones to among others that the suit land was initially **Kisumu/Konya/817** registered in the names of Magdalena Olang Chek, Jacob Oyoo Muok and Odama Omolo. That he is a son to Jacob Oyoo Muok. That in the year 1990 Jacob Oyoo Muok and Magdalena Olang Chek agreed to sell to the 1<sup>st</sup> Defendant a portion of that land which was marked on the ground at Ksh.220,000/=. That the 1<sup>st</sup> Defendant paid Ksh.85,000/= and made the two vendors thumb print some documents, passing them as acknowledgment for money paid, but which later turned out to be transfer documents. That later the Plaintiffs established that the 1<sup>st</sup> Defendant had fraudulently transferred the whole land to herself and subdivided it into 12 parcels being Kisumu/Konya/3476 to 3487. That the 1<sup>st</sup> Defendant transferred 10 of the parcels to the other Defendants leaving parcels **3476 and 3477** in her name. That the signature of Konel Odam Omolo in the transfer documents was a forgery as he was illiterate.

3. The application came up for hearing on the 25<sup>th</sup> September 2017 when Mr. Ombija for Wasuna for the 6<sup>th</sup> Defendant and M/S Oketch for the Plaintiffs tendered their oral rival submissions.

4. The court has carefully considered the grounds on the notice of motion, affidavit evidence by both sides, the oral submission by the counsel, the pleadings filed and come to the following determinations;

a) That the suit was commenced through the plaint dated 20<sup>th</sup> June 2015 and filed in court on the 29<sup>th</sup> June 2015.

b) That the 1<sup>st</sup> Plaintiff who is suing as administrator of the estate of Konel Odam Omolo a.k.a Odama Omolo, his late father, and one of the three registered proprietors of the original parcel. He has availed a copy of Grant Ad litem dated 24<sup>th</sup> April 2015 and issued in Kisumu H.C. Probate and Administration Cause No.185 of 2015. The capacity of the 1<sup>st</sup> Plaintiff to sue in this suit has not been contested.

c) That the 2<sup>nd</sup> Plaintiff has sued in his own name and a perusal of paragraph 27 of the plaint shows the basis of his claim over 2.5 acres of the land he occupies is based on adverse possession. That the objection by the 6<sup>th</sup> Defendant on the 2<sup>nd</sup> Plaintiff capacity to sue this suit is therefore not based on the pleadings and has no merit.

d) That prayers (a) and (b) of the plaint are for declaratory orders on the transfer of the original parcel, its subdivision and transfer of the parcels arising therefrom. That prayer (c) is for nullifying the transfer to the 1<sup>st</sup> Defendant and the subsequent transfer to the 2<sup>nd</sup> to 11<sup>th</sup> Defendants. That prayers (d) and (e) are alternative prayers in which the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff prays for orders that they are entitled to ½ share of 1<sup>st</sup> Plaintiff father's share to the land and 2.5 acres of the suit land respectively. That in view of the contents of paragraphs 14 to 27 of the plaint, the court finds that the Plaintiffs have established a cause of action against the 6<sup>th</sup> Defendant as he is one of the persons to whom a portion of land subdivided from the original parcel 817 was transferred to. That it is only fair and just that the suit be allowed to go to hearing and the issues be decided on merit.

5. That flowing from the foregoing, the notice of motion dated 2<sup>nd</sup> May 2017 is without merit and is dismissed with costs.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 29<sup>th</sup> DAY OF NOVEMBER 2017

In presence of;

Plaintiffs        2<sup>nd</sup> present

Defendants        Absent

Counsel         Mr. Odeny for the Plaintiff

                      Mr. Awino for the 6<sup>th</sup> Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**29/11/2017**

29/11/2017

S.M. Kibunja Judge

Oyugi/Joane court assistant

Mr. Odeny for the Plaintiffs/Respondents

Mr. Awino for the 6<sup>th</sup> Defendant/applicant

Court: The ruling dated and delivered in open court in the presence of the 2<sup>nd</sup> Plaintiff, Mr. Odeny for the Plaintiffs and Mr. Awino for the 6<sup>th</sup> Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**29/11/2017**