



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

**ELC CASE NO. 326 OF 2016 [OS]**

**KWETU LIMITED.....PLAINTIFF**

**VERSUS**

**DOMINIC SESE ..... DEFENDANT**

**[As the immediate next of kin to the estate of Lawrence Migosi Sese]**

**JUDGMENT**

1. On 6/4/2016, the plaintiff, **KWETU LIMITED**, took out an Originating Summons dated 5/4/2016 seeking the following orders:

*a) That this honourable court be pleased to issue orders directing the Land Registrar in Nairobi to execute a transfer and issue title in favour of the applicant.*

*b) That the applicant be allowed to deposit the sum of Kenya shillings two million six hundred ninety one thousand four hundred and twenty eight and fifty cents [KShs.2,691,428.50] which is the remainder of the purchase price in court to be held until such a time when the estate shall gain lawful representation.*

*c) Costs of the proceedings to be borne by the respondent.*

2. The Originating Summons is supported by an affidavit sworn by Grace Wambui Kibaki, a director of the plaintiff company, on 5/4/2016. She depones that on 26/1/2011, the late Lawrence Sese [*hereinafter referred to as 'the deceased'*], together with other co-owners, sold Land Reference Number 37/246/31 to the defendant herein, Kwetu Limited, at a purchase price of KShs.20,000,000/-. The deceased subsequently died in December 2013. Because the estate of the deceased does not have duly appointed personal representatives, the transfer in favour of the plaintiff has not been fully executed. Similarly, the portion of the purchase price payable to the estate of the deceased is still held by the plaintiff. The plaintiff was given possession of the suit property in 2013. It is against the above background that the plaintiff [purchaser] seeks the orders set out in the opening paragraph of this Judgment.

3. On 24/10/2017, I directed the plaintiff to serve summons and hearing notice upon the deceased's estate through a notice in either the Daily Nation or the Standard Newspaper. The plaintiff subsequently filed an affidavit of service to which it annexed a notice published in the Daily Nation Newspaper of 13/11/2017. Satisfied that the estate of the deceased had been served, I allowed hearing to proceed *ex parte* on 5/12/2017 and reserved my judgment for 7/12/2017.

## **Determination**

4. I have looked at the certified copy of the Title of the suit property, Number I.R 12815. The Title is registered in the names of Lawrence Sese, Hudson Mongare, Daniel Rogito, Silvanus Omoni, Nyaoga Monyerero, Mageto Mosoti and Nyabwari Monyerero as tenants in common in equal shares. There is no existing encumbrance against the Title.

5. I have similarly looked at all the affidavits filed in support of the Originating Summons. I am satisfied that the suit property was sold by persons holding themselves as registered tenants in common or as duly appointed personal representatives of the deceased tenants in common. The Originating Summons is unopposed and the evidence presented by the plaintiff is unchallenged.

6. Consequently, I hereby grant the plaintiff's Originating Summons in the following terms:

*a) The plaintiff, Kwetu Limited, shall deposit the sum of Kenya shillings two million six hundred and ninety one thousand four hundred and twenty eight and fifty cents in court and the said money shall be released to the estate of the late Lawrence Sese upon appointment of personal representatives within the framework of the applicable law.*

*b) Upon deposit of the above sum, the Deputy Registrar at Milimani Environment & Land Court shall execute the instrument of Transfer and all other necessary documents that would have required execution by the late Lawrence Sese for the purpose of procuring transfer of Land Reference Number 37/246/31 comprised in Certificate of Title Number I.R 12815 into the name of Kwetu Limited.*

*c) The orders made herein do not relieve the Chief Land Registrar and the Land Registrars working under the Chief Land Registrar their statutory obligation to ensure satisfaction of all other statutory requirements before effecting the transfer.*

*d) There shall be no order as to costs of this suit.*

**Dated, signed and delivered at Nairobi on this 7th day of December, 2017.**

**B M EBOSO**

**JUDGE**

**In the presence of:**

Kimani:           for the Plaintiff

Henia:            for the Defendant

Halima Abdi:    Court Assistant