



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.322 OF 2013**

**MARY AMBOGO ODERO.....PLAINTIFF**

**VERSUS**

**MICHAEL OBUNGA NDEGE.....DEFENDANT**

**JUDGMENT**

1. **Mary Ambogo** Odero, the Plaintiff, commenced this suit against **Michael Obunga Ndege**, the Defendant, vide the plaint dated 29<sup>th</sup> October 2013. The Plaintiff seeks for an order directed at the Kisumu District Land Registrar to cancel the registration of the Defendant as proprietor of **Kisumu/Kogony/58** and reinstatement of the Plaintiff as the bona fides registered proprietor. She also seeks for costs.

2. The Plaintiff avers that she was the acquitable owner of the said land as her late husband had purchased it from one **Marcelus Okeyo Obur**. That after the death of her late husband and

Marcellous Okeyo Obur, the administrators of the latter, being George Opogo and Caleb Olieno, transferred the land to the Plaintiff as beneficiary of her late husband's estate. That the Defendant then logged a claim against the two administrators over the land before the Land disputes Tribunal in 2011. That the Tribunal awarded the land to the Defendant. That the Land Disputes Tribunal had by the time of making its award been abolished on the establishment of this court. The Plaintiff was not made a party in the Land Dispute Tribunal proceedings and its decision was illegal.

3. The Plaintiff testified as PW1. She produced a copy of the title deed in her name over the land dated 10<sup>th</sup> December 2009, which she said her late brother in law Marcellous Okeyo Obur had sold to her late husband. She also produced a copy of the green card for the land. She told the court that the Defendant is also her brother in law and is currently registered as proprietor of the land following the court order in Kisumu C.M. Land Case No.63 of 2011. The Plaintiff also produced a land sale agreement between her late husband and Marcellous Okeyo of 1985. The Plaintiff disclosed that Marcellous Okeyo had died before her husband but could not recall the date of their death. She added that she had not filed a succession cause in respect of her late husband estate. She further testified that she had no land control board consent on the sale agreement between her late husband and the late Marcellous Okeyo. That only one of the administrators of the late Marcellous Okeyo estate signed the transfer form of the land to her name. That the land was registered in her name before her late husband died.

4. The following are the issues for the determination by the court;

a) Whether the Plaintiff has established illegality in the process leading to the Defendant registration with the land.

b) Who pays the costs.

5. The court has carefully considered the evidence adduced by the Plaintiff, the pleadings filed and come to the following determinations;

a) That by the Plaintiff's own disclosure the suit land initially belonged to Okeyo Obur alias Marcellous Okeyo Obur. That the said Marcellous Okeyo Obur, the Defendant in this proceedings and her late husband were brothers.

b) That her late husband and Marcellous Okeyo Obur entered into a sale agreement over the suit land in 1985 and that the land was registered in her name on 10<sup>th</sup> December 2009. That as the said Marcellous Okeyo Obur had died on 27<sup>th</sup> May 1988, his estate was being administered by George Opogo Okeyo and Caleb Oteino Okeyo. That however, only George Opogo Okeyo signed her transfer forms that was registered on the 10<sup>th</sup> December 2009. That was irregular as the transfer ought to have been signed by both joint administrators of the estate.

c) That the Plaintiff was aware that the Defendant lodged a claim over the suit land against the said George Opogo Okeyo and Caleb Otieno Okeyo before the Land Disputes Tribunal and that the Tribunal ruled in the Defendant's favour. The tribunals award was reportedly adopted in Kisumu C.M. Court Land case No.63 of 2011. The Plaintiff did not seek to be enjoined in the Tribunal's or courts adoption proceedings. There is also nothing before this court to show whether the two administrators filed judicial review or appeal proceedings over the Tribunal award. The Plaintiff cannot therefore appear to challenge the Tribunal and the court adoption proceedings through this case. That in any case, the certified copies of the tribunal award and proceedings have not been availed in these proceedings.

d) That while the Plaintiff appears to be challenging the Tribunal's award and court's adoption proceedings through this case, she has not enjoined the two administrators of the estate of Marcellous Okeyo Obur for them to be accorded a hearing. The failure of the two administrators to challenge the Tribunal's award and adoption proceedings can only be construed or taken to mean that they were not aggrieved by it. That as litigation must come to an end, and as the Plaintiff can still pursue the said administrators for refund of the purchase price paid as no consent from the land control board had been obtained, subject to the **Limitation of Actions Act Chapter 22 of Laws of Kenya** provisions, the court finds no basis of interfering with the Tribunal's award.

e) That while the Plaintiff had testified in her evidence and averred in her pleading especially paragraph 4 of the Plaint, that the suit land was transferred to her by the administrators of the estate of Marcellous Okeyo Obur after the death of her late husband, she changed that position during re-examination when she stated that she become the registered proprietor of the land during the lifetime of her husband. That this leaves the court with doubts as to her truthfulness especially noting that the transfer document was signed by only one of the two joint administrators.

6. That for the reasons set out above, the court finds the Plaintiff has failed to prove her case on a balance of probabilities and her claim is dismissed with no orders as to costs.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 6<sup>TH</sup> DAY OF DECEMBER 2017**

In presence of;

Plaintiff            Absent

Defendant Absent

Counsel M/S Bagwasi for Odeny for Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**6/12/2017**

6/12/2017

S.M. Oyugi court assistant

Parties absent

M/s Bagwasi for Odeny for the Plaintiff

Order: Judgment dated and delivered in open court in presence of M/S Bagwasi for Odeny for the Plaintiff.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**6/12/2017**