



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 29 OF 2015

VERONICA AORE WEREPLAINTIFF

VERSUS

JOSEPH ONDIEK KENO1ST DEFENDANT

TRANS-NZOIA INVESTMENT COMPANY2ND DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff is the administratrix of the estate of the late **Paul Okumu Odowa** who was her husband. The first Defendant is a brother-in-law to the Plaintiff. The second Defendant is a Limited Liability Company which was engaged in the business of land buying and distribution of the same to its shareholders.
2. The Plaintiff filed a suit against the Defendants seeking the following reliefs:-
 - (a) An eviction order against the first Defendant from **Plot No. 1110 at Namanjalala farm.**
 - (b) A permanent injunction restraining the first Defendant and anybody claiming through him from interfering with **Plot No. 1110 at Namanjalala farm.**
 - (c) Re- transfer of shares of **Raphael Paul Okumu Odowa** (deceased) to herself.
 - (d) Costs of the suit.
3. The Defendants who were duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

4. The Plaintiff testified that her late husband (deceased) purchased three acres (suitland) from one **Gerestina Masitsa** who was a shareholder with the second Defendant (the company). The Company transferred the shares into the name of the deceased. The deceased then invited the first Defendant who was married to his wife's sister and asked him to take care of the suitland on his behalf.
5. When the deceased passed on in 1999, the Plaintiff started the process of having the deceased's shares transferred to her. She later discovered that the Company had transferred the deceased's shares to the first Defendant. The first Defendant refused to move out of the suitland prompting her to file this suit.

ANALYSIS OF EVIDENCE

6. The plaintiff is the administratrix of the estate of the deceased. She produced **grant of letters ad litem** [Exhibit 1]. She also produced **a copy of share certificate** by the Company to **Gerestina Masitsa** [Exhibit 2]. She also produced a copy of transfer of land duly signed by the officials of the Company [Exhibit 3].
7. The Plaintiff's evidence is not controverted. She has demonstrated that **Gerestina Masitsa** was a shareholder with the company. This is the person who sold the suitland to the deceased. The deceased then invited the first Defendant to take care of the suitland on his behalf. The first Defendant may have used the advantage of being on the ground to defraud the deceased's shares upon his demise.

DECISION

8. I find that the Plaintiff has proved her case against the Defendants on a balance of probabilities. I grant the following reliefs:_
 - (a) An order of eviction against the first Defendant from **Plot No. 1110 at Namanjalala farm.**
 - (b) A permanent injunction restraining the first Defendant or anyone claiming through him from interfering with the suitland after he has been evicted.
 - (c) An order that the second Defendant do re-transfer the deceased's shares to the administratrix of the estate of the deceased.
 - (d) The Defendants do jointly and severally meet the costs of this suit.

Dated, signed and delivered at Kitale on this 4th day of April 2016.

E. OBAGA

JUDGE

COURT: Judgement delivered at 2.30 pm in the absence of

Plaintiff who was aware of date and time of judgement.

Court Assistant : Winnie

E. OBAGA

JUDGE

4/4/16