



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

CIVIL CASE NO.118 OF 2015

SARAH AMOLO MAGUTI.....1ST PLAINTIFF

JARED MBOYA OKOTH.....2ND PLAINTIFF

[Suing as joint Administrators by limited grant of the estate of

ALPHONCE MAGUTI OKOTH - Deceased]

VERSUS

THE MINISTER OF LAND & SETTLEMENT.....1ST DEFENDANT

MINISTER OF PROVINCIAL ADMINISTRATION &

INTERNAL SECURITY.....2ND DEFENDANT

THE INSPECTOR GENERAL OF POLICE.....3RD DEFENDANT

CHIEF REGISTRAR.....4TH DEFENDANT

COUNTY LAND REGISTRAR, KISUMU COUNTY.....5TH DEFENDANT

DIRECTOR OF LAND ADJUDICATION.....6TH DEFENDANT

COUNTY LAND ADJUDICATION

OFFICER, KISUMU COUNTY.....7TH DEFENDANT

THE NATIONAL LAND COMMISSION.....8TH DEFENDANT

THE ATTORNEY GENERAL.....9TH DEFENDANT

JUDGMENT

1. **Sarah Amolo Maguti** and **Jared Mboya Okoth** herein after referred to as 1st and 2nd Plaintiffs, suing as administrators by limited grant of the estate of **Alphonc Maguti Okoth**, deceased, filed this case against the **The Minister of Land & Settlement, Minister of Provincial Administration & Internal Security, The Inspector General of Police, Chief Registrar, County Land Registrar, Kisumu County, County Land Adjudication Officer, Kisumu County, County Land Adjudication Officer,**

Kisumu County, The National Land Commission, and The Attorney General, hereinafter referred to as 1st to 9th Defendant through the plaint dated 14th May 2015. The Plaintiffs, who are window and grandchild of **Alphonse Maguti Okoth**, who died on 10th February 1985, filed this suit on the strength of a limited grant ad litem issued on 16th February 2015 in **Kisumu High Court P&A cause No.,80 of 2015**. The Plaintiff claim in summary is that land parcel **Kisumu/Manyatta 'B'/767** registered in the names of Government of Kenya, and partly used by 2nd and 3rd Defendants, was part of their ancestral land and belonged to the deceased but was erroneously and fraudulently registered with the Government of Kenya. That their efforts to have the mistake corrected and land returned to them has not born fruits and hence this case. The Plaintiffs pray for several prayers summarized as follows:

- a) That acts and omissions of the Defendants leading the suit land to be registered with the Government of Kenya be declared illegal and unconstitutional.
- b) That the register of the suit land be rectified to read the deceased **Alphonse Maguti Okoth**.
- c) That Defendants do vacate the suit property.
- d) Mesne profits for trespass.
- e) Costs

2. The Attorney General filed a memorandum of appearance dated 25.6.2015 for the 1st to 7th and 9th Defendants only. No papers were filed for the 8th Defendant, though duly served with the suit papers.

3. That when the matter came up for mention on 29th February 2016, Mr Otieno and Mr Nyauma , learned counsel for the Plaintiff's and Defendants 1 to 7 and 9 respectively addressed the court after which the court ordered that the **County Land Registrar and Surveyor** do visit the suit land and establish the acreage of the portion occupied by **Manyatta Police Post** and file a report. The exercise was carried out and a report dated 11th April 2016, signed by both **The District Land Registrar Kisumu and Regional Surveyor, Nyanza** region was filed. The report shows that the portion of the suit land used and known to be reserved for **Manyatta Police Post is 0.46 hectares marked "B"** and the portion claimed by the family of **Alphonse Maguti Okoth was 2.32 hectares and marked "A"** on the annexed sketch. The counsel for the parties mentioned above appeared before the court on 26th April 2016 and agreed with the report of the Land Registrar and Surveyor be taken as the basis of the solution to the dispute herein. The court indicated that it needed time to peruse the record before giving its directions.

4. The issue for determination is first whether the parties herein have reached a settlement on the dispute over entitlement and ownership of land parcel **Kisumu/Manyatta 'B'/767**. Secondly who pays the costs of this suit.

5. The court has considered the pleadings, the list of documents filed by the Plaintiffs and the report dated 11.4.2016 by the **District Land Registrar Kisumu and Regional Surveyor Nyanza**, which resulted from this courts order of 29th February 2016. The recommendation in the report have been accepted by both Plaintiffs and the 1st to 7th and 9th Defendants through their respective counsels. The court find that the recommendations on the entitlement and ownership ratio of the suit land between the Plaintiffs family and **Manyatta Police Post** is based on how the parties have over a long time occupied the land. The recommendation will resolve this dispute that has been in existence since 1980 as evidenced by the attached correspondence to the Plaintiffs pleadings.

6. That judgment is therefore entered by consent and in terms of the Land Registrar's and Surveyors report dated 11th April 2016 as follows:

- a) That land parcel **Kisumu/Manyatta 'B'/767** be subdivided into two parcels of **0.46** hectares and **2.32** hectares as shown on the sketch attached to the report dated 11th April 2016.

b) That the parcels measuring **2.32** hectares be transferred to the names of **Alphonse Maguti Okoth**, deceased, to be thereafter dealt with in accordance with the Law of **Succession Act, Chapter 160 Laws of Kenya**.

c) That the parcel of **0.46** hectares do remain in the names of the Government of Kenya.

d) That each party bear their own costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 8TH DAY OF JUNE 2016

In presence of;

Plaintiffs Absent

Defendants Absent

Counsel Mr Otieno for the Plaintiff and Mr Nyauma for the 1st to 7th Defendants.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/6/2016

S.M. Kibunja J

Oyugi court assistant

Mr Otieno for the Plaintiffs

Mr Nyauma for 1st to 7th and 9th Defendants

Court: Judgment delivered in open court in presence of Mr Otieno for Plaintiffs and Mr Nyauma for 1st to 7th and 9th Defendants.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/6/2016