



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.319 OF 2015
MARTIN OKUMU ALIAS OKUMU
OBURA.....PLAINTIFF

VERSUS

AUGUSTINUS MANJE
AJUMBODEFENDANT

JUDGMENT

1. **Martin Okumu Obura alias Okumu Obura**, the Plaintiff, vide the plaint dated 17th November 2015, sued **Augustinus Manje Ajumbo**, the Defendant for vacant possession of land parcel **Kisumu/Nyamware/694**, general damages and costs. The Plaintiff avers that he owns the said land with **Margaret Maningu Ondere**, deceased, and that the Defendant trespassed onto the said land on or about 21st September 2015 and constructed a house without permission. The Defendant has been asked to vacate but has declined.

2. The summons to enter appearance and other suit papers were served on the Defendant by Alex Otieno Omayo on 17th February 2016 and affidavit of service filed on 21st April 2016. That the Defendant did not enter appearance or file defence and the Plaintiff requested for interlocutory judgment under their letter dated 8th March 2016 and filed in court on 21st April 2016. The suit was then fixed for formal proof on the 27th July 2016 when the Plaintiff testified as PW1. He testified that the said land was registered in the joint names of Margaret Maniangu, who was his late mother and himself. That the said Margaret is now deceased. That in 2015, the Defendant elected a house on the said land without his permission. That the Defendant has his own land parcel number 98 as confirmed in the sale agreement he produced as exhibit. The Plaintiff called **Fibi Nyanjong Nyandew**, his sister, as a witness and she testified as PW2.

3. At the close of the Plaintiff's case, his counsel, Mr Omayo, submitted that the certificate of official search produced as exhibit confirms the ownership of the suit land to the Plaintiff since Margaret has since died. The learned counsel submitted that though the Plaintiff did not avail documentary evidence to confirm the death of Margaret, she is indeed dead and that averment has not been challenged. The counsel asked the court to award the Plaintiff reasonable damages and costs.

4. The following are the issues for the court's determination:

- a) Whether the Defendant has a legal claim over the suit land, and if not, whether he should give vacant possession to the Plaintiff.
- b) What prayers to award in this case.

c) Who pays the costs.

5. The court has carefully considered the pleadings, evidence by PW1 and PW2, submissions by counsel and come to the following determinations:

a) That the certificate of official search issued on 30thSeptember 2015 in respect of land parcel **Kisumu/Nyamware/694** confirms that **Margaret Maningu Ondere** and **Okumu Obura** got registered as joint tenants with the said land on unspecified date.

b) That in terms of **Section 91(4) (b)** of the Land Registration Act No.3 of 2012, **“on the death of a joint tenant, that tenant’s interest shall vest in the surviving tenant or tenants jointly.”**

c) That even though the Plaintiff claimed that **Margaret Moniango Ondere** is deceased, he did not avail any documentary evidence in the form of certificate of death.He also did not give details of the date of death and the court is therefore unable to make any determination as to whether the title to the suit land now vests wholly on the Plaintiff.

d) That the Plaintiff being one of the two registered owners of the suit land has proved on a balance of probabilities that the Defendant acts of moving onto the suit land and constructing a dwelling house thereon was without his consent.

e) That the Defendant is therefore a trespasser onto the suit land and despite being asked to vacate, he has declined.That the Defendant though served with summons did not defend this suit and should therefore give vacant possession.

f) That as the Defendant is reportedly a cousin to the Plaintiff going by the evidence PW2 gave, it is only fair that he be given time to move himself and his possessions from the suit land.

g) That so as to encourage harmony between the two parties of the Defendant and the Plaintiff, the court will not award damages but the Defendant will meet the Plaintiff’s costs in this suit.

6. That the court finds that the Plaintiff has proved his case against the Defendant on a balance of probabilities and enters judgment against the Defendant as follows:

a) That the Defendant do give the plaintiff vacant possession of land parcel **Kisumu/Nyamware/694** within ninety (90) days and in default he be evicted.

b) That the Defendant do meet the Plaintiffs costs in this suit.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 9TH DAY OF NOVEMBER 2016

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr Omayo for the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/11/2016

9/11/2016

S.M. Kibunja Judge

Oyugi court assistant

Mr. Omayya for the plaintiff

Court: Judgment dated and delivered in open court in presence of Mr. Omayya for the Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/11/2016