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| Case Number:   | Environment and Land OS Case 8 of 2021<br>(Formerly Migori ELC OS Case 14 of 2019)   |
| Date Delivered:  | 08 Nov 2021  |
| Case Class:  | Civil  |
| Court:   | Environment and Land Court at Homa Bay   |
| Case Action:   | Judgment   |
| Judge:   | George Martin Ongondo  |
| Citation:  | Nicholas Oracha Omeny v Richard Olunga Migan<br>& another [2021] eKLR                |
| Advocates:   | Mr. G. Nyambati holding brief for Mr. G.S Okoth<br>learned counsel for the Plaintiff |
| Case Summary:  | -  |
| Court Division:  | Environment and Land   |
| History Magistrates:   | -  |
| County:  | Homa Bay   |
| Docket Number:   | -  |
| History Docket Number:   | -  |
| Case Outcome:  | Application allowed  |
| History County:  | -  |
| Representation By Advocates:   | One party or some parties represented  |
| Advocates For:   | -  |
| Advocates Against:   | -  |
| Sum Awarded:   | -  |
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT HOMABAY**

**ELC OS CASE 8 OF 2021**

**(FORMERLY MIGORI ELC OS CASE NO. 14 OF 2019)**

**NICHOLAS ORACHA OMENY.....PLAINTIFF**

**VERSUS**

**RICHARD OLUNGA MIGAN.....1<sup>ST</sup> DEFENDANT**

**PITALIS KAUMBA MIGAN.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By an originating summons dated 5<sup>th</sup> February, 2019 and duly filed herein on 27<sup>th</sup> February 2019, the plaintiff, Nicholas Oracha Omeny through M/S G.S Okoth and Company Advocates, is claiming to have acquired title to a portion of land title number Kanyada/Kanyango/Kalanya/1213 (the suit land) by way of adverse possession. Among the questions for determination on the face of the originating summons include whether:

a. Richard Olunga Migana, the 1<sup>st</sup> defendant herein has *locus standi* to be sued on behalf of **Peter Wanjare Migana** the deceased registered proprietor of the suit land.

b. The said plaintiff acquired his possessory rights through purchase of the same or not and whether the vendor put him in possession thereof and when did he put him in possession of the suit land"

2. The originating summons is based on a 12-paragraphed supporting affidavit sworn on even date by the plaintiff. A copy of the sale of land agreement and photographs marked as "N00-1", "N00-2A" and "N00-2B" are annexed to the affidavit.

3. The defendants were duly served on 13<sup>th</sup> March 2019 as shown in an affidavit of service sworn on 5<sup>th</sup> August, 2019 by an authorized process server, Oscar Jacob Caleb, However, the defendants did not respond to the originating summons.

4. This court is guided by the decision in **Great Lakes Company (U) Limited versus Kenya Revenue Authority (2009)** KLR 720 on issues for determination in a suit generally. Plainly, the questions for determination set out on the face of the originating summons and as pointed out in paragraph 1 above, present themselves for determination herein.

5. On 10<sup>th</sup> of July 2020, the parties entered into a consent to compromise this suit as follows:-

a. "By consent of the plaintiff and the defendants may the court mark the above case as compromised on the following terms:-

b. The defendants agree that Nicholas Oracha Omeny purchased a portion of Land Parcel No. Kanyada / Kanyango-Kalanya/1213 from Peter Wanjare Migana which portion measures 2.5 acres (1.0 hectares) and hereby undertakes to survey the suit land and transfer the same to his name.

c. The defendants further agree that a portion of the suit Land Parcel No. Kanyada/Kanyango- Kalanya/1213 measuring 3.0 acres

(1.2 Ha) was also sold to Mrs. Majuma Yago Agunga by the late Peter Wanjare Migani and shall survey the suit land and transfer the said portion to her.

d. The remaining portion measuring approximately 1.73 hectares (4.325 acres) is to be registered in the names of Pitalis Kaumba Migani and Richard Olunga Migani as Proprietors in common of equal undivided shares.

e. Richard Olunga Migani who is currently hospitalized at Kenyatta National Hospital has duly confirmed his agreement to the above terms of compromise on-line to all present in chambers of G.S Okoth Advocate and has verbally authorized Daniel Omondi Ouma Id No. 23513831 to be his authorized agent.

f. Each party to bear his own costs”

6. I applaud the parties for their swift action to have the suit determined in consonant with **Article 159 (2) (b) (c) and (e) of the Constitution of Kenya 2010 and section 3 of the Environment and Land Court Act, 2015 (2011)**

7. Accordingly, Judgment be and is hereby entered in the terms captured at paragraph 5 (a) to (f) hereinabove

Ordered accordingly.

Judgment delivered, dated and signed at Homa-Bay Environment and Land Court on this **8<sup>th</sup>** day of **November, 2021**.

**G.M.A ONG’ONDO**

**JUDGE**

**In the presence of;**

**Mr. G. Nyambati holding brief for Mr. G.S Okoth learned counsel for the Plaintiff.**

**Court Assistant: Okello.**

**G.M.A ONG’ONDO**

**JUDGE**



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