



**Olumatia v Opaque & another (Environment & Land Case
477 of 2014) [2023] KEELC 17013 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17013 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 477 OF 2014
DO OHUNGO, J
APRIL 25, 2023**

BETWEEN

PENINA LYNET OLUMATIA PLAINTIFF

AND

LUKAS ORENDE OPAKE 1ST DEFENDANT

PROTUS OMBAKA SHITUBI 2ND DEFENDANT

RULING

1. Judgment was delivered in this matter on 26th February 2019 by N.A. Matheka J, granting orders as follows:
 1. An order of cancellation of titles in land parcel numbers East Wanga/Isongo/3812 and 3813 so that the same reverts to its original number and an order of specific performance that the defendants be compelled to appear before the land control board and sign all the relevant documents in favour of the plaintiff to create and transfer a portion of land measuring 1 acre in the names of the plaintiff from either the original number comprised in title number East Wanga/Isongo/923 or from the new created numbers comprised in land parcel numbers East Wanga/Isongo/3812 and 3813 and in default the Deputy Registrar of this court be authorized to sign them on behalf of the defendants.
 2. An order of permanent injunction restraining the defendants from evicting the plaintiff or in any way interfering with the plaintiff's portion of 1 (one) acre in the said land or the new title that would have been created out of the said land.
 3. Costs of the suit to be borne by the 1st Defendant.



2. The plaintiff later moved the court through Notice of Motion dated 21st February 2023, which is the subject of this ruling. The following orders are sought in the application:
 1. Spent
 2. That an order be issued in favour of the applicant against the respondent directing the County Land Registrar Kakamega and the County Land Surveyor Kakamega or their authorized representatives or personnel to visit land parcel number East Wanga/Isongo/923 with a view of implementing the decree and judgment dated the 26th February 2019.
 3. That upon granting prayer 2 hereinabove, the Officer Commanding Makunga Police Station, Shianda Police Station, the Assistant County Commissioner East Wanga Sub-County, the Area Chief, the Assistant Chief and any officers delegated under their command be ordered to provide the plaintiff/applicant's (sic), the County Land Registrar and the County Land Surveyor, their representatives or personnel with adequate security if necessary while in the process of executing or implementing the decree and judgment of this Honourable Court.
 4. That because of the conduct of the respondent who is not ready to see litigation comes to an end be compelled to pay the costs of this application.
3. The application primarily targets the first defendant who is referred to in it as respondent. The application is supported by an affidavit sworn on 21st February 2023 by the plaintiff. She deposed being aggrieved with the judgment, the first defendant appealed against it to the Court of Appeal and that despite his appeal being dismissed on 20th July 2022, the first defendant had not cooperated with her or the lands office to ensure that the decree is effected. She added that she approached the lands office for intervention and paid all the fees for survey, subdivision, and transfer of the 1 acre but efforts of personnel from the said office were in vain because of resistance from the first defendant. That based on the volatile situation on the ground, the lands office and the area administration have advised that they can only intervene if they are directed to do so and if security is provided. She also deposed that the second defendant is willing to comply with the judgment and had signed an undertaking to that effect, dated 18th October 2022.
4. The first defendant opposed the application through his replying affidavit sworn on 14th March 2023. He deposed that he has never been served with any court orders and that he has never refused to comply with any orders of the court. He added that he is willing to transfer the land to the plaintiff as ordered and that following the judgment, land parcel number East/Wanga/Isongo/923 had reverted to the original owner who was his deceased father. That in the circumstances, he needs to file succession proceedings in respect of his late father's estate and thereafter transfer the 1 acre to the plaintiff. He denied that there has ever been any threats or intimidation to the plaintiff or that he has ever refused to sign any of the documents mentioned by the plaintiff.
5. The plaintiff filed a further supporting affidavit sworn on 21st March 2023 in which she deposed that although due to an error, Land Registrar Kakamega misunderstood the decree and reverted to the name of the late Opaire Omubaka, the Land Registrar exercised his statutory power and rectified the error after the plaintiff's advocates wrote to him a letter dated November 3, 2022.
6. The application was canvassed through written submissions which both sides duly filed and exchanged. I have considered the application, the affidavits, and the submissions.



7. There is no dispute as to the terms of the judgment and the obligations created thereby. Indeed, the first defendant has stated that he is ready to comply with the judgment. I note that the judgment was delivered way back on 26th February 2019 and that the first defendant's appeal to the Court of Appeal was dismissed on 20th July 2022. The first defendant has had more than ample time since dismissal of his appeal, to comply with the judgment. He has not demonstrated any tangible steps taken by him to ensure early compliance. Instead, he has attempted to introduce an excuse that land parcel number East Wanga/Isongo/923 reverted to the name of his deceased father and he needs to file succession proceedings in respect of his late father's estate. The applicant has demonstrated through a copy of certificate of search dated 14th December 2022 that the defendants are currently the registered proprietors. In any case, even if it were the case that land parcel number East Wanga/Isongo/923 reverted to the name of the first defendant's deceased father, I do not think that implementation of the judgment would be dependent on succession proceedings.
8. In view of the foregoing, I find merit in the plaintiff's application. I will give the first defendant a final opportunity and a limited period to comply and in default the lands department personnel and security agencies will intervene.
9. I therefore make the following orders:
 - a. The first defendant to fully comply with the judgment delivered herein on 26th February 2019 within 21 (twenty-one) days from the date of this ruling.
 - b. In default:
 - i. An order shall automatically issue directing the County Land Registrar Kakamega and the County Land Surveyor Kakamega and their authorized personnel to visit land parcel number East Wanga/Isongo/923 to implement the decree and judgment dated 26th February 2019.
 - ii. The Officer Commanding Makunga Police Station, Shianda Police Station, and the Assistant County Commissioner East Wanga Sub-County to provide the County Land Registrar, the County Land Surveyor and their authorized personnel with adequate security while implementing the decree and judgment of this Honourable Court.
 - c. Costs of Notice of Motion dated 21st February 2023 shall be borne by the first defendant.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 25TH DAY OF APRIL 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendants

Court Assistant: E. Juma

