

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 573 OF 2006

IN THE MATTER OF THE ESTATE OF NATHANIEL LITORO (DECEASED)

AND

MEDINA NDENDA.....PETITIONER

RULING

1. For determination is the summons dated 20th April 2018 brought by Medina Ndeda Litoro. It seeks that the respondent, Francis Litoro, be punished for removing boundaries set by the Kakamega District Land Surveyor as ordered by the court and that he be compelled to put the said boundaries back as they had been marked by the Surveyor. She says that the court had made the order on 29th October 2016. She avers that the respondent had been opposed to the said survey and had become hostile to her.

2. The respondent was served but did not file a reply.

3. The application was heard orally on 31st July 2018. The applicant told the court that she no longer wanted the respondent punished by the court, but she wanted the court to compel him to subdivide the land afresh. She complained that he had subdivided the land without following the correct process, and that he had given his brothers the poor parts of the land. Mr. Imbenzi, for the respondent, submitted that the grant had been confirmed a long time ago and the land distributed. He urged that any issues arising thereafter ought to go to the Environment and Land Court. In any event, he submitted, the applicant was prosecuting the application for persons unnamed.

4. I have perused the record. The grant was confirmed in 2015. There are orders made also in 2015 directing the Surveyor to carry out a survey of the estate property in terms of the certificate of confirmation of grant.

5. What the applicant states in her application and what she said orally at her address to the court appear to me to differ. In her application she would like the court to have the boundaries marked by the Surveyor restored. In her oral address she asked the court to order the respondent to subdivide the land afresh. It would appear that she is not clear on what she wants.

6. She has not placed before court any evidence that the Surveyor visited the land and did the survey work, more particularly fixed boundaries, the same that the respondent is alleged to have interfered with. She has also not placed before me any material to demonstrate the alleged interference. I am unable therefore to grant the orders sought.

7. The application dated 20th April 2018 is accordingly dismissed. Each party shall bear their own costs.

DATED, SIGNED and DELIVERED at KAKAMEGA this 25TH DAY OF SEPTEMBER , 2018

W. MUSYOKA

JUDGE