



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

MISC CIVIL APPLICATION NO 9 OF 2017(JR)

REPUBLICAPPLICANT

VERSUS

THE CHAIRMAN LAND DISPUTES

TRIBUNAL KAKAMEGA MUNICIPALITY.....RESPONDENT

AND

ALFRED N. ANDATI.....INTERESTED PARTY

ESTHER B.U. MUHONJA.....INTERESTED PARTY

STANLEY M. LIJINGA.....INTERESTED PARTY

ELIJAH'S FOUR SONS.....INTERESTED PARTY

AMINA ABDI PFRIZER.....INTERESTED PARTY/APPLICANT

JOHN OTIENDE MASIMBA.....INTERESTED PARTY

EX PARTE APPLICANT: JAMES SAKWA MUKOLWE

RULING

This first application is dated 31st March 2017 and is brought by the 5th Interested Party under Sections 1A, 1B & 3A, 63 & 98 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;

1. THAT this Honourable Court be pleased to give effect and implement the Ruling and or orders made on 12/6/2014 by Hon SAID J. CHITEMBWE by empowering the Deputy Registrar High Court Kakamega to execute and or sign in place of the Ex parte Applicant herein JAMES SAKWA MUKOLWE all related documents necessary to facilitate sub division and transfer of land parcel known as BUTSOTSO/SHIKOTI/4464 curving a portion thereof measuring 0.1 Hectare to be registered into the names of the 5th interested Party/Applicant herein AMINA ABDI PRIZER
2. THAT this Honourable Court be pleased to cancel and or revert back any new titles created from the original title number BUTSOTSO/SHIKOTI/4464 by rectifying the certified copy of the register of the said title and further remove any encumbrances on the said title to enable the land

Registrar Kakamega County to effect new subsequent sub divisions, transfer and registration of the said portion of 0.1 Hectares into the names of the 5th Interested party/Applicant.

3. THAT costs of this application be provided for.

The applicant submitted that, the ex parte applicant has never occupied and or utilized the applicant's said portion on the ground since the 5th interested party/applicant family took possession in 1971 and or thereabouts. That the ex parte applicant has never been successful in evicting the 5th interested party/applicant from her said portion on the said suit land. That her late father ABDI MNENWA during his lifetime in 1971 bought a portion measuring 0.1 hectare or thereabouts from JOHN MASIMBA of land parcel BUTSOTSO/SHIKOTI/4464 and settled their family members thereon. (annexed and marked "AAP 1" is a copy of the land sale agreement dated 2nd December, 1979). That she has been in occupation and utilization of the suit land BUTSOTSO/SHIKOTI/4464 measuring 0.1 hectare since 1971 together with her family continuously openly, peacefully and uninterrupted which is a period in excess of 12 years on which she has extensively done developments in total exclusion of the ex-parte applicant. She has always lived on the said portion of the said parcel of land which has a clear distinct boundary separating her said portion and that of other buyers and the ex parte applicant herein. That the ex parte applicant has never occupied and or utilized her said portion of the suit land on the ground since they took actual possession in 1971 or thereabouts to date. That the ex parte applicant has never been successful in evicting them from the said portion of land. The ex parte applicant herein filed Notice of Motion dated 12th June 2009 which was dismissed with no orders as to costs by his Lordship Justice SAID J. CHITEMBWE on 12th June, 2014 whereby the Judge inter alias held that applicant and her co interested parties herein had indeed been in actual possession of the suit land for over a period of 12 years and therefore should not be evicted from the suit land by the respondent (annexed and marked "AAP 2" is a copy of the said Ruling). That since the court made its ruling on 12th June, 2014 the ex parte applicant has not been cooperative to honour and implement the said orders by surrendering the original title deed and or execute all the relevant sub division and transfer documents in her favour or her co-interested parties herein. The exparte applicant has never challenged the said ruling on appeal. The applicant is claiming her interest and title of the said portion of land measuring 0.1 hectares or thereabouts out of the parcel of land known as BUTSOTSO/SHIKOTI/1859. The ex parte applicant's title of the said portion of the suit land is statutory time barred and has been extinguished by operation of the law by virtue of her occupation of the said land for a period exceeding 12 years.

The second application is dated 6th September 2016 and is brought under section 98 of the civil procedure Act and seeks the following orders;

1. The Deputy Registrar of this honourable court be empowered to execute, on behalf of the ex parte/respondent, all the documents necessary to facilitate the sub division of land parcel No. BUTSOTSO/SHIKOTI/4464 into two portions with one portion measuring 0.1 ha to be transferred to the 1st interested party/applicant.
2. The title deed issued to the exparte/respondent for land parcel No. BUTSOTSO/SHIKOTI/4464 on 8/11/1990 or on any other date be cancelled and/or revoked to enable the land registrar, Kakamega county to effect the sub-division and transfer of the portion measuring 0.1 ha thereof into the names of the 1st interested party/applicant.
3. Costs of this application be provided for.

This application is based on the annexed affidavit of ALFRED N. ANDITI, 1st interested party/applicant and on the following grounds; that this honourable court decreed that the 1st interested party/applicant is entitled to 0.1. Ha. out of land parcel No. BUTSOTSO/SHIKOTI/4464 and the same should be excised from the said title and registered in the names of the 1st interested party/applicant. The ex parte applicant/respondent, in bid to defeat this court's decree, has declined to surrender the title deed he was issued with for title number BUTSOTSO/SHIKOTI/4464 and he has also declined to execute the

documents necessary to facilitate the sub-division and transfer of the suit land and it is only proper and just that the orders sought be granted.

The applicant submitted that, he is the 1st interested party/applicant herein. That on 12th day of June, 2014 this honourable court delivered ruling in favour and awarded him 0.1 Ha. out of Land Parcel No. BUTSOTSO/SHIKOTI/4464 which is in the names of the ex parte applicant/respondent. That to-date the ex parte applicant/respondent has declined to surrender the title deed and/or execute the documents necessary to facilitate the sub-division and transfer of title of the 0.1 Ha of land aforesaid into his names as decreed by the court despite his numerous requests to him. That this honourable court does authorize the deputy registrar to execute all the documents necessary to facilitate the sub-division and transfer of the 0.1 ha out of the suit land into his names and also cancels and/or revokes the title deed issued to the ex parte applicant/respondent to enable the Land Registrar, Kakamega county effect the transfer as decreed.

This court has considered both applications and the submissions therein. The exparte applicant was served but failed to attend court and/or file any papers in opposition. The first application is based on the affidavit of the 5th interested party/applicant AMINA ABDI PFRIZER that the ruling made on 12th June 2014 by Hon. Justice SAID CHITEMBWE J was made in favour of interested parties herein. That the 5th interested party/applicant herein AMINA ABDI PFRIZER has been in occupation and utilization of the suit land since 1971 continuously openly, peacefully and uninterrupted which is a period in excess of 12 years on which she has extensively done developments in total exclusion of the Respondent. That the 5th interest party/applicant AMINA ABDI PFRIZER'S late father ABDI MNENWA during his lifetime in 1971 bought a portion measuring 0.1 Hectare or thereabouts from JOHN MASIMBA from land parcel BUTSOTSO/SHIKOTI/4464 and settled his family members thereon. That the applicant took possession of a portion of land measuring 0.1 Hectare or thereabouts in 1971 together with his family and has been in actual occupation and utilization of the suit land since then and has extensively developed which has been continuously openly, peaceful and uninterrupted for a period in excess of 12 years in total exclusion of the Respondent. That the 5th interested party/applicant has always lived on the said parcel of land on her portions with distinct clear boundaries and extensively developed the same in total exclusion of the respondent herein.

Similarly the second application is based on the annexed affidavit of ALFRED N. ANDITI, 1st interested party/applicant that this court decreed that the 1st interested party/applicant is entitled to 0.1. Ha. out of land parcel No. BUTSOTSO/SHIKOTI/4464 and the same should be excised from the said title and registered in the names of the 1st interested party/applicant. The ex parte applicant/respondent, in bid to defeat this court's decree, has declined to surrender the title deed he was issued with for title number BUTSOTSO/SHIKOTI/4464 and he has also declined to execute the documents necessary to facilitate the sub-division and transfer of the suit land and it is only proper and just that the orders sought be granted.

I have perused the said ruling where the ex parte applicant herein filed Notice of Motion dated 12th June 2009 which was dismissed with no orders as to costs by his Lordship Justice SAID J. CHITEMBWE on 12th June, 2014 whereby the Judge inter alias held that the interested parties herein had indeed been in actual possession of the suit land for over a period of 12 years and therefore should not be evicted from the suit land by the respondent (annexed and marked "AAP 2" is a copy of the said Ruling). The Judge on page 5 of the ruling states as follows;

"Given the information on record I do find that all that is remaining is for the applicant to process title deeds in favour of the interested parties. The interested parties can also pursue the succession cause that was filed by the applicant in respect of the estate of his late father so that they can obtain their respective title deeds. The Tribunal was correct in holding that the interested parties are entitled to live on the suit land. The tribunal could not have ordered the subdivision of the land as it lacked jurisdiction and that part of the order is hereby quashed. However, the interested parties should live on the land and are entitled to their respective portions of the suit property."

I find that since the court made its ruling on 12th June, 2014 the ex parte applicant has not been

cooperative to honour and implement the said orders by surrendering the original title deed and or execute all the relevant sub division and transfer documents in her favour or her co-interested parties herein. The ex parte applicant has never challenged the said ruling on appeal. The applicants in both applications are claiming their interest and title of the said portions of land measuring 0.1 hectares or thereabouts out of the parcel of land known as BUTSOTSO/SHIKOTI/1859. The two applications have not been opposed. The applicants now want this court to authorize the deputy registrar to execute all the documents necessary to facilitate the sub-division and transfer of the various 0.1 ha pieces out of the suit land into their respective names and also cancel and/or revoke the title deed issued to the ex parte applicant/respondent to enable the Land Registrar, Kakamega county effect the transfer as decreed. I find that the ruling made on 12th June 2014 by Hon. Justice SAID CHITEMBWE J was made in favour of interested parties herein. The applications dated 31st March 2017 and 6th September 2016 are therefore merited and I grant them as prayed with costs to the applicants.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 14TH DAY OF DECEMBER 2017.

N.A. MATHEKA

JUDGE