



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. MISC. APPLICATION NO.125 OF 2014.

JAMES WESONGA NAFWAAPPLICANT

VERSUS

COUNTY LAND REGISTRAR.....RESPONDENT

AND

FESTUS WERE MUNGAYO.....INTERESTED PARTY.

R U L I N G.

JAMES WESONGA NAFWA, through M/S. Balongo & co. advocates, filed the notice of motion dated 14th October, 2014 against the County Land Registrar for the following order;

“ (a) That a notice to show cause why he has declined to register James Wesonga Nafwa as the proprietor of all that parcel of land comprising L.R. Marachi/Elukhari/948.”

The application is based on five grounds on the face of the application and Applicant’s supporting affidavit sworn on 14th October, 2014. The application names Festus Were Mungayo as an Interested Party and he filed a replying affidavit sworn on 7th November, 2014 opposing the application.

I have considered the grounds on the application, submission by counsel and Interested Party, supporting and replying affidavits and find as follows;

1. That there has been several cases over the suit land in various forums culminating in Kakamega H.C.C.C. No. 146 of 1989 in which Fanuel Nafwa Muyubi was the Plaintiff, and Festus Were the Defendant. In the judgment delivered by the court on **13th December, 1996, Tanui J**, found as follows;

“On the balance of probabilities , I am satisfied that the appeal case No. 44 of 1966 filed at the arbitration board, Busia is not heard and finalized. The question of the Defendant being first registered proprietor of the suit property does not arise as that registration was obtained by fraud. As to the suit being barred by statute of Limitation of Actions Act, this also does not arise. In any case the Defendant admitted that he does not live on the suit land and there was no counterclaim to the Plaintiff prayers.

It is therefore ordered that the registration of the Defendant as the sole proprietor of the parcel of land title No. Marachi/Elukhari/948 be cancelled. The Provincial Commissioner Western Province to constitute an arbitration board for Busia District to hear and finalize the arbitration case No. 44

of 1966. The Plaintiff to have the costs of this case.”

It is important to note that the court did not issue an order that the Plaintiff be registered as the proprietor of the suit land. The issue of ownership was to be determined through the hearing and finalization of arbitration case No. 44 of 1966.

2. That the Applicant has not availed any court order directing that he be registered as the proprietor of the suit land. Even if the Applicant had such an order, the forum to move the court in execution and compliance would be in the case where the order was issued and not the current miscellaneous application.
3. That the Interested Party's contention that the arbitration award in case No. 44 of 1966 was heard and award made in his favour has not been rebutted. He further indicated that the award was filed and adopted in Kakamega CM. Misc. No. 116 of 1998 which has also not been disputed. The Interested Party exhibited a copy of eviction order against James Nafwa Muyubi issued in Kakamega CM. Misc. No.116 of 1998 on the 20th February, 2003. There are no evidence of appeal being preferred against the decision in arbitration case No. 44 of 1966, Kakamega CM. Misc. No. 116 of 1998 and Kakamega H.C.C. No.146 of 1989.
4. That from the foregoing, the court finds no merit in the application and the same is dismissed with costs to the Interested Party.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON...26THDAY OF FEBRUARY, 2015.

IN THE PRESENCE OF; ABSENT APPLICANT

... ABSENT RESPONDENT

PRESENTINTERESTED PARTY.

JUDGE.