



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELCC No. 254 OF 2016**

**MARIA NYONGESA ALOKA.....PLAINTIFF**

**VERSUS**

**LAZARUS SIRENGO MUKOYANI.....DEFENDANT**

**RULING**

1. This suit was filed on 15<sup>th</sup> December 2016, through plaint dated 15<sup>th</sup> November 2016. The plaintiff sought judgment for cancellation of the defendant's registration as proprietor of the parcel of land known as N. Kabras/Kivaywa/1210 and that she be registered as the absolute owner of the said property. The defendant reacted to the suit by raising a preliminary objection that the suit was *res judicata*. The objection was upheld and the suit struck out through a ruling delivered on 24<sup>th</sup> July 2018.

2. Later, on 18<sup>th</sup> October 2021, Notice of Motion dated 18<sup>th</sup> October 2021 was filed by Fredrick Wamalwa Sirengo and Benjamin Barasa Wafula. This ruling is in respect of the application.

3. The following orders are sought in the application:

1. *[Spent]*

2. *This Hon. Court be pleased and issues vesting orders directing the OCS of Matete Police Station to arrest and arraign in this Hon. Court the Plaintiff's/Decree Debtor's family, relatives, workers, agents, herself and any other person or institution encroaching on the deceased Major Lazarus Sirengo Mukoyani's (Deceased Decree Holder's LR. No. North Kabras/Kivaywa/1210.*

3. *This Hon. Court do issue the FINAL DECREE for evicting the Plaintiff's/Decree Debtor's family, relatives, workers, agents and herself or any person and or institution claiming through her from L. No. North Kabras/Kivaywa/1210; which is the Intestate Property of the late Lazarus Sirengo Mukoyani, within seven (7) days of the Final Decree.*

4. *THAT, after granting such orders; this Hon. Court do issue Vesting Orders directing the OCS Matete Police Station and the Chief of Kivaywa Location, to supervise the return of the deceased Major Lazarus Sirengo Mukoyani's displaced family back to their Matrimonial LR. No. North Kabras/Kivaywa/1210.*

5. *THAT, this Hon. Court do issue further orders directing the Agricultural Officer of West Kenya Sugar Company to assess the Sugarcanes damaged on two (2) acres Sugar Plantation of LR. No. North Kabras/Kivaywa/1210; by the Plaintiff's/Decree Debtor's family, relatives, workers and agents at her instigation, in the year 2012; then compel the Plaintiff/Decree Debtor to pay for such damages with interests from the date of such damages.*

6. *THAT, finally; this Hon. Court do issue orders compelling the Plaintiff's/Decree Debtor's family, relatives, workers, agents and herself; under the Registered Land Act 2012: Section 157 (1 a – c (i-iii) & d) for knowingly and fraudulently assisting and helping each other to remove the common boundaries then enabling themselves to procure the deceased Major Lazarus Sirengo Mukoyani's LR. No. North Kabras/Kivaywa/1210.*

7. *Costs hereof.*

4. The application is supported by an affidavit jointly sworn by Fredrick Wamalwa Sirengo and Benjamin Barasa Wafula, the applicants. From a copy of a limited grant *ad litem* which they annexed to the affidavit, it seems that the defendant passed away on 15<sup>th</sup> October 2019 and that the applicants were granted letters of administration *ad litem* in respect of his estate on 31<sup>st</sup> May 2021. The applicants deposed that the late Lazarus Sirengo Mukoyani and the late Anna Namarome Nyongesa were beneficiaries of the estate of the late Wafula Opara and that

they shared among themselves. That after this suit was struck out, the defendant incited her family, relatives, workers, agents and herself who trespassed on the parcel of land known as N. Kabras/Kivaywa/1210.

5. Despite service, the defendant did not file a response to the application. The applicants relied on the material on record and urged the court to render a ruling.

6. I have considered the application and the material on record. As noted earlier, this suit was struck out on 24<sup>th</sup> July 2018, with costs to the defendant. That marked the end of the matter, save for proceedings to enforce the judgment on costs. The present applicants were not parties to the case as at 24<sup>th</sup> July 2018 when the suit was struck out. They are not parties now, even though they claim to hold letters of administration *ad litem* in respect of the defendant's estate.

7. In the present application, the applicants seek such orders as eviction of the plaintiff and her family, reinstatement of the defendant's family to the suit property and assessment of damage to sugar cane plantation among others. It will be noted that no such orders were granted in the final judgment or order herein when the suit was struck out. The said order brought this case to conclusion save for proceedings towards enforcing the award of costs. Once a court renders its final order, it becomes *functus officio* in so far as its power to determine the parties' respective claims in the matter goes. Once such a decision has been made, it is final and conclusive, subject to any right of appeal. The court does not have jurisdiction to reopen the case to consider granting new relief that was neither sought nor granted. See **Raila Odinga & Others vs. IEBC & Others [2013] eKLR**. Any proceedings filed in a court without jurisdiction are dead on arrival and cannot be remedied. See **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR**.

8. In view of the foregoing, Notice of Motion dated 18<sup>th</sup> October 2021 is struck out. No order on costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF MARCH 2022.**

**D. O. OHUNGO**

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendant

Fredrick Wamalwa Sirengo the first applicant present

No appearance by Benjamin Barasa Wafula the second applicant

Court Assistant: E. Juma