



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

PETITION NO. 15 OF 2013

CLARE NASIMIYU WANJALA.....PLAINTIFF

VERSUS

MOSES WAKWOMA KAKOI.....1ST DEFENDANT

DANSON SIMIYU SITATI.....2ND DEFENDANT

THE LAND REGISTRAR – TRANS NZOIA.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. This is a ruling in respect of an application dated 23/10/2013. the applicant is seeking to amend a decree issued on 17/8/2010 in Kimilili Senior Resident Magistrate's Court Land Case No. 7 of 2010.

2. The applicant had filed a Constitutional Petition through a lawyer in which she sought various reliefs. She later chose to act in person after which she filed this application. The Petition itself is clear as to the reliefs the applicant is seeking. However the application is not clear as to what relief the applicant wants. It is not clear how rectification of the decree will assist her. Her prayers before court during the hearing of the application were quite different from what she is seeking in the application. It is clear that the applicant does not understand what she wants. This is a problem common to litigants who opt to act in person in matters they know little about.

3. The decree she is seeking to have amended arises from Kimilili Senior Resident Magistrate's court Land case No. 7 of 2010. If there was any problem with that decree, the applicant should have made the application before that court which will then decide the same on merits. A higher court cannot order a decree in the lower court amended when there are no grounds shown for the same.

4. The applicant's application cannot be allowed in the circumstances. I have tried to understand the applicant's ultimate prayer to court. I have had to go through the petition she filed through a lawyer. Her problems started with an agreement in which she entered into a land exchange agreement with the first respondent Moses Wakwoma Kakoi. The applicant agreed to take the first respondent's land known as Bungoma Tongaren/552 and the first respondent agreed to take her land known as Elgon investments Estate Limited Milele Plot No. 664. The applicant occupied the Bungoma land for over 10 years after which the first respondent went back to re-claim it which he did. The applicant then went back to her

land at Elgon Investments but found that the first respondent had transferred it to the second respondent Danson Sitati Simiyu. As per her submissions before court she has settled on her land Parcel No. 664 but the land is in the name of the second respondent. It is therefore clear from the Petition filed herein that she is seeking an order for rectification of title. This petition is yet to be heard. The applicant cannot therefore seek such orders through the application she filed which she seems not to understand as her prayers before the court during the hearing do not support her application. She will have to proceed with her petition which contains the reliefs she is seeking. The upshot of this is that her application lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of July, 2014.

E. OBAGA

JUDGE

COURT: Ruling delivered in the absence of the applicant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/7/2014