



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**LAND & ENVIRONMENT CASE NO: 48 OF 2013**

**FREDRICK ATANAS ASHIONO.....PLAINTIFF**

**VERSUS**

**AGGREY SEVENSSON LIHANDA.....DEFENDANT**

**RULING**

The application dated 10/12 2013 seeks an order of stay of the eviction order herein and setting aside the consent order recorded on 4/9/2013. Mr. Mukavale, counsel for the applicant submitted that the defendant is not in occupation of plot number **ISUKHA/KAMBIRI/1671**. He however entered into a consent to have himself evicted. The end result is that it is the applicant who was not a party to the suit who is now being evicted. The applicant lives on the suit land with her children and mother in law.

The plaintiff filed a replying affidavit sworn on 4<sup>th</sup> March, 2014. He contends that the suit land was sold to the defendant by the applicant's husband. He bought the land from the defendant. He has annexed a copy of his title deed issued on 26/10/2011.

I have read the pleading herein and the current application and the replying affidavit. The defendant filed a statement of admission that is not dated but was filed on 20<sup>th</sup> February 2013. The defendant contends in his statement that he is ready to vacate the suit land immediately. A consent was recorded on 4/9/2013 before the Deputy Registrar. That consent led to the eviction order. It is clear that the consent was not adopted as an order of this court. It is also clear that the defendant does not reside on the suit land.

The applicant contends that her husband with whom they have nine children disappeared and his whereabouts is unknown. The defendant alleges to have bought the suit land from the applicant's husband. Since the applicant is in occupation of the suit land and did not consent to the eviction order, I do find that her application is merited and the same is granted as prayed. The consent judgment is hereby set aside. The applicant is hereby enjoined in this suit and the eviction order I also set aside. The defendant to file her defence and matter to proceed for full hearing before the Land and Environment Court.

Dated, delivered and signed at Kakamega this 16<sup>th</sup> day of September 2014.

**SAID J. CHITEMBWE**

**JUDGE**