



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 109 OF 2000

JAMES MAYEKU MAKITONI

& 3 OTHERSPLAINTIFFS

VERSUS

TERESINA N. MUSEBE

& 4 OTHERS DEFENDANTS

R U L I N G

The Applicants brought a Notice of Motion dated 29/11/2010 seeking an order directing that the District Land Registrar Bungoma do restore title No. East Bukusu/Nalondo 1658. They also sought an order canceling title Nos. East Bukusu/Nalondo/2550 and 2549. They further sought an order restraining further subdivision of Title Nos East/Bukusu/Nalondo/2550 and 2549.

The application is supported by the Affidavit of James Mayeku Makitoni one of the Applicants. The Applicants contend that they have a decree in their favour resulting from a judgment given on 21st December, 2001. In that suit, the Applicants had brought a suit against the Respondents claiming that the Respondents were holding in trust for them eleven (11) acres out of East Bukusu/Nalondo/1658. The Court found in their favour and decreed that the Respondents were to transfer 11 acres to the Applicants.

The Respondents never bothered to defend the suit. They went ahead and subdivided the land initially known as East Bukusu/Nalondo/1658 which resulted into East Bukusu/Nalondo/2549 and 2550. The Applicants contend that the subdivision of the land was meant to defeat the Applicant's interests.

The Respondents who were aware of the hearing date of the application herein neither filed grounds of opposition or Replying Affidavit nor did their Advocate attend Court during the hearing. The hearing of this application had been postponed on a number of occasions awaiting participation of the Respondent's participation in vain. The ex-parte judgment which had resulted in the decree herein had been set aside on certain conditions which were not met prompting its restoration on application of the Applicant's counsel. It is clear that the Respondents herein have no interest in defending this matter. The subdivision was made to defeat the expected decree. Court orders are never given in vain and where it is shown that one party is out to defeat the course of justice, the Court will not hesitate to grant orders which will ensure that, the purpose for which the decree was issued is not defeated. I find that this application which in any case is not opposed is well founded. I allow the same as prayed with costs to the Applicants.

It is so ordered.

Dated, signed and delivered in Open Court on this 14th day of August, 2013.

E. OBAGA

JUDGE

In the absence of parties who had been informed of the date of delivery of ruling.

Court Clerk: Lobolia.

E. OBAGA

JUDGE

14/08/2013