



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL SUIT NO.50 OF 2010

RESILAH NYANGWESO MAKOKHA.....
PLAINTIFF

VERSUS

FRANCIS SHISIA ESHITEMI.....
.....DEFENDANT

AND

PATRICK ODAYA ONGOMA.....INTERESTED
PARTY

R U L I N G

On 28th May 2012, this court delivered judgment on behalf of F. Muchemi J. In the material part of the judgment, the learned Judge stated thus:

“The plaintiff has proved on a balance of probabilities that the defendant is a trespasser on her land parcel no 3821 and also no 3820 which parcels are adjacent to each other. As a result of the trespass the plaintiff has shown that she has suffered damage due to denial of use of her land. I find that she is entitled to damages. I therefore enter judgment in favour of the plaintiff against the defendant (in) terms of the prayers in the plaint. I award damages for trespass to the plaintiff of Kshs.100,000/-. The defendant to meet the cost of the suit.”

On 22nd August 2012, Patrick Odaya Ongoma, describing himself as an Interested Party, appointed counsel to act on his behalf in the case. By an application dated 29th August 2012 made under **Order 51 Rule 1, Order 22 Rule 22(1)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**, the Applicant sought stay of execution of the judgment and decree of this court pending hearing interpartes of the application. He also asked the court to order the District Land Registrar and the District Surveyor Busia to visit parcels Nos. Bukhayo/Kisoko/3820, 3821 and 514 to determine the actual location on the ground of the said parcels. The Interested Party further prayed for the court to order the Plaintiff to pay the full value of the structures and other developments on parcel No.Bukhayo/Kisoko/514 were destroyed and or demolished in wrongful and unlawful execution of the decree. The Interested Party further prayed that the OCS Nambale Police Station and the District Officer Nambale Division be served

with the order. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the Interested Party.

The Interested Party appeared before this court under certificate of urgency. The court ordered the Interested Party to serve the Plaintiff with the application. The hearing of the application was scheduled for 9th October 2012. The Interested Party filed an affidavit of service indicating that he had served the Plaintiff with the application. This court was satisfied that the Plaintiff was duly served. It ordered the Interested Party to proceed with this application, the absence of the Plaintiff notwithstanding. It is the Interested Party's case that the eviction order which was effected by the Plaintiff was not effected against the Defendant but against him. He asserts that he had not at any time occupied the Plaintiff's parcels of land referred to in the judgment of Muchemi J. Instead, he complains that the eviction order was effected against his parcel of land i.e. LR.No.Bukhayo/Kisoko/541. The thrust of the Interested Party's application is that the eviction order was effected in respect of a parcel of land which was not the subject of the suit. That is the reason why the Interested Party is seeking this court's intervention to compel the District Land Registrar and the District Surveyor Busia to visit the ground to determine where the suit parcels of land that were the subject of litigation in this suit are actually situate.

This court has carefully considered the application. There are certain issues that arise in this application that touches on the jurisdiction of this court to hear the application. In the first instance, it should be noted that judgment has already been entered in favour of the Plaintiff. That decision has not been appealed against. It is a valid judgment of this court until it is varied or set aside or overturned on appeal. The Interested Party was not a party to the initial suit. He did not seek the leave of this court before he came on record. And even if he did, not being a party to the original suit, this court lacks jurisdiction to reopen a case which has been heard and determined by a court of competent jurisdiction. The Interested Party is a stranger to these proceedings. If the Interested Party was aggrieved by the decision of this court, he was required to file an independent suit against those he thinks caused his travails. He cannot barge into a suit that has already been determined. There is no claim in form of a plaint or a counterclaim on record that will entitle this court to issue further orders other than the ones that constitute the judgment of the court.

In the premises therefore, this court is of the considered view that the Interested Party should file an independent suit to agitate his grievance against the decision of this court. This court lacks jurisdiction to inquire into or investigate a judgment at the behest of a person who was not a party to the suit. Enough said. The application dated 29th August 2012 lacks merit and is hereby dismissed. Since the Plaintiff was not represented during the hearing of the application, there shall be no orders as to costs. It is so ordered.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 1ST DAY OF AUGUST, 2013.

F. TUIYOT

JUDGE

