



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

HCCA NO. 35 OF 1998

ASHA CHARIK HAMAD.....APPELLANT

VERSUS

ISMAIL LUNANI WAMBUTO..... 1ST RESPONDENT

FRED N. OPILO ..... 2ND RESPONDENT

AND

FATUM NJOHA HASAN..... 1ST INTERESTED PARTY

MWANARABU SHISIA HAMISI..... 2ND INTERESTED PARTY

RULING

The appellant/applicant has filed an application brought under Section 3 , 3A and 63 of the Civil Procedure Act and Order 1 Rule 10(2) and 13 of the Rules. She is seeking the prayer below;

1. **THAT** the application be certified as urgent and the same be heard on priority basis.
2. **THAT** the Honorable court be pleased to enjoin one FRED N. OPILO to this suit as the 2nd Respondent.
3. **THAT** the Honourable court be pleased to cancel all title deeds of land parcel known as E. BUKUSU/S. KANDUYI/1087 and same be reverted back to its original number land parcel known as E. BUKUSU/S. KANDUYI/450.
4. **THAT** the Honourable court be pleased to order the District Land Registrar (BUNGOMA COUNTY) to register the said whole land parcel known as E. BUKUSU/S. KANDUYI/450 into my names (ASHA CHARIK HAMAD) unconditionally.
5. **THAT** the Respondents, District Land Registrar Bungoma, their agents, their workers, their servants, themselves and any other person whosoever have claim over the subject matter be restrained by a temporary injunction from inter meddling, interfering, dealing and or tampering with the title document of land parcel known as E. BUKUSU/S. KANDUYI/450 pending the hearing and determination of this application.
6. **THAT** the costs of this application be provided for:-

The application is premised on the grounds on the face of the application and her affidavit. Upon perusal

of the court file, there was no affidavit annexed to her application. I have considered the grounds raised. This was an appeal from the decision of Western Province Land disputes Appeals Tribunal. Mr. Fred N. Opilo sought to be joined in these proceedings, was not a party in the proceedings before the Western Province LDT Appeals Tribunal. The Appeal is already determined in favour of the applicant. Adding another party will be re-opening the appeal. I will, on this basis decline prayer 2 of the application.

Prayers 3 & 4 are related. The applicant obtained a decree in her favour. On 20th November 2001, the learned Judge J.L. Osiemo made a ruling following up on the earlier judgment on appeal that;

***“ the parties were advised to file suit in the ordinary courts. The upshot is that any transfer effected as a result of the decisions of the tribunal's transferring land to Amina Abdalla Hamisi is hereby canceled and her name shall be removed from the title.”***

This order in my view gave the applicant land and what remained for her was to execute it . Like earlier observed by my Muchelule J in his ruling in an application for contempt, the applicant has not made available copies of searches from the Ministry of Lands to ascertain the true records as they are currently. However if granting the order will assist her in executing the earlier decision of the court then I have no reason to refuse her. I therefore allow prayer 3 & 4.

Lastly on prayer 5, she has requested for an open-ended order of injunction. The court was informed the 1st Respondent is deceased. She has not laid any basis on who exactly is interfering with the title documents or the mode of interference. She has not proved principles for granting the injunction and to who it should be directed at. The District Land Registrar and Mr. Fred Opilo are not parties to this proceedings. It would be improper to issue orders against them without hearing their version in accordance with the rules of natural Justice. In the end, i decline this prayer.

Justice Osiemo advised the applicant to ventilate her claim through an ordinary suit. I will repeat the same. If there are people interfering with her rights over title E. BUKUSU/S. KANDUYI/450, let her bring fresh suits against the said persons and not further applications on this appeal file which is already determined and should remain closed. The end result is that prayer 2 & 5 is dismissed , prayer 3 & 4 is allowed. I make no order on costs.

**RULING DATED, SIGNED, READ and DELIVERED** in open court this 17th day of September 2013.

**A. OMOLLO**

**JUDGE**