



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Miscellaneous Civil Application 37 of 2008

IN THE MATTER OF TITLE NUMBER KAMAGAMBO/KANYIMACH/82

AND

IN THE MATTER OF MIGORI DISTRICT LAND DISPUTE TRIBUNAL MISCELLANEOUS CASE NO. 38 OF 2007 (REF: MIG/DNG/LDT/107/LPN/82)

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF REBECCA NYAMUSI MOSE ... APPLICANT

AND

MANASSE SABARA OTWERE 1ST RESPONDENT
ZABLON ODARI OTWERE 2ND RESPONDENT
JOASH KIVONI OTWERE 3RD RESPONDENT
MIGORI DISTRICT LAND
DISPUTES TRIBUNAL 4TH RESPONDENT

RULING

On 30th April 2009 this court delivered a ruling pursuant to which the following orders were extracted:

- “(i) That an order of certiorari do and is hereby issued quashing all the proceedings, findings and decision of the 4th respondent in Migori District Land Disputes Tribunal Misc. Case No. 38 of 2007 (Manasse Sabara Otwere, Zablun Odari Otwere, Joash Kivoni Otwere, -vs- Rebecca Nyamusi Mose) (Ref: MIG/RNG/LDT/) & LPN/82) and the decision of the Resident Magistrate’s court Rongo in RM Misc. Applic. NO. 38 of 2007.**
- (ii) That the applicant do transfer three (3) acres of the suit land being Kamagambo/Kanyimach/82 to the 1st respondent, Manasse Sabara Otwere pursuant to the consent order recorded on 19th October 2004 in Rongo RMCC No. 95 of 2004.**
- (iii) That the respondents do pay the costs of the chamber summons and notice of motion herein.”**

No appeal was preferred against the said decision by any of the parties.

On 2nd September 2009 the applicant filed an application by way of notice of motion brought pursuant to the aforesaid orders and the provisions of **section 143** of the **Registered Land Act** as well as **section 3A** of the **Civil Procedure Act**. She sought the following orders:

- “(a) That the registration of Justo Sabara Otwere family as proprietor of all that land parcel number known as Kamagambo/Kanyimach/82 do be cancelled forthwith and in place the name of Rebecca Nyamusi Mose be restored as proprietor.**
- (b) The District Land Registrar do forthwith rectify the register to reflect Rebecca Nyamusi Mose as proprietor of all that land parcel known as Kamagambo/Kanyimach/82.**
- (c) The 1st, 2nd and 3rd respondents do stop and desist from interfering the plaintiff’s lawful possession of the land parcel Kamagambo/Kanyimach/82 in any manner whatsoever except as ordered by the court.**
- (d) The deputy registrar of this honourable court do execute all or any necessary transfer forms, or documents on behalf of the respondents and/or Justo Sabara Otwere in respect of land parcel No. Kamagambo/Kanyimach/82.**
- (e) The defendants and the District Land Registrar do pay the costs of this application in any event.”**

In the affidavit in support of the application Rebecca Nyamusi Mose deposed that she had been the registered proprietor of the aforesaid parcel of land. During the hearing of the notice of motion seeking to quash the decision of the 4th respondent, the other respondents alleged that the suit land was registered in their father’s name and relied on an official search to that effect. It showed that the transfer was dated 3rd April 2008 and the certificate was dated 10th July 2008. It was signed by one J.T. Njigi. However, the applicant had in her possession two official searches dated 18th July 2008 and 19th January 2009 showing that she was the registered proprietor of the suit land.

When the applicant went to Migori District Land’s Office to effect the orders that were issued by this court on 30th April 2009, she was informed that she was no longer the registered proprietor of the suit land as it had been transferred to Justo Otwere Sabara. It is evident from an official search annexed to her affidavit as annexure “**RNM 2**” that the transfer in favour of Justo Otwere Sabara was effected on 2nd April 2008. However, the said Otwere was dead since 23rd July 2004.

From the conflicting official searches as highlighted above it appeared to the applicant that the Land Registrar was keeping two records over the same parcel. The applicant added that on 5th August 2009 the 1st, 2nd and 3rd respondents attended Rongo Land Control Board and sought consent to subdivide the suit land. In view of the events aforesaid the applicant urged the court to grant the orders as contained in her application.

The 2nd respondent filed a replying affidavit on behalf of himself and the 1st and 3rd respondents. He stated that at the time of the hearing of the applicant’s notice of motion the suit land was registered in their deceased father’s name. He stated that the certificate of official search that were annexed to the applicant’s affidavit purporting to show that she was the registered proprietor of the suit land are forged documents. He denied that the entries in the register in respect of the suit land had been fraudulently interfered with and further

denied that they had gone to the local Land Control Board on 5th of August 2009 for purposes of seeking consent to subdivide the suit land as alleged. They urged the court to strike out the applicant's application.

Having carefully considered the matters raised by the parties herein and having perused the various copies of certificates of official search and other documents relating to the suit land, it appears that there are several issues that require to be clarified by the District Land Registrar, Migori before I make a final determination of this application. In that regard I order the said Registrar to present himself before this court on a date to be agreed upon by counsel so that he can be examined with a view to shading light regarding the issues in controversy. He should bring with him the register relating to land parcel No. Kamagambo/Kanyimach/82 as well as the correspondence file in respect of the said parcel of land and any other document related thereto.

DATED, SIGNED AND DELIVERED AT KISII THIS 5TH DAY OF MARCH, 2010.

D. MUSINGA
JUDGE.

5/3/2010

Before D. Musinga, J.

Mobisa – cc

N/A for the Applicant

N/A for the Respondent

COURT: Ruling delivered in open court.

D. MUSINGA
JUDGE.