

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Civil Case 92 of 2000

PHANICE AKWENOA ABOYEKA PLAINTIFF

V E R S U S

MUSA OMOTO OCHOMO DEFENDANT

R U L I N G

The appellant filed the notice of motion dated 12th April 2005 seeking to enjoin Suleiman Mukabana Masibayi and Richard Nyongesa Wambongo as co-defendants as well as orders for revocation and/or cancellation of the subdivision of plot No. **S. WANGA/EKERO/978** as per prayer (b) of the said application. When the matter came up for hearing on 29th October, 2009 Mr. Akwala counsel for the applicant and Mr. Kiveu, counsel for the respondent, informed the court that prayer (a) was granted by the court and they asked the court to make a finding on prayer (b) based on the earlier submissions.

The supporting affidavit of the applicant states that the subdivision of plot No. **S.WANGA/EKERO/978** was done after this court had granted the applicant title to one acre of that land by way of adverse possession. From the proceedings before Justice Fred Ochieng on 10th June, 2008, Mr. Kiveu for the third parties conceded that the defendant had agreed to transfer the one acre granted to the plaintiff/applicant. This is also established by the annexures in support of the application dated 12th April, 2005.

On 8th February, 2002 Justice Waweru delivered a judgement and granted the applicant one acre by way of adverse possession. There was no appeal against that judgement although the case proceeded exparte. The defendant went ahead and applied for consent to the Mumias Land Control Board to transfer one acre as per the court judgement. The defendant, Musa Omoto Ochomo signed a transfer in favour of the applicant in an effort to facilitate the fulfillment of the decree.

I do find that the sub-division of the suit property before the transfer of one acre to the plaintiff was done in bad faith so as to defeat the ends of justice. This cannot be allowed to stand as that would be contrary to the judgement of the court.

In the circumstances, I do grant prayer (b) of the application dated 12th April, 2005 as prayed therein. Since the third parties attempted to block the ends of justice, I do condemn them to pay the costs of this application to the applicant. Orders accordingly.

SAID J. CHITEMBWE

J U D G E

Delivered, dated and counter signed at Kakamega this 15th day of April, 2010

ISAAC LENAOLA

J U D G E