



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (MILIMANI LAW COURTS
MISCELLANEOUS APPLICATION 598 OF 2007

REPUBLIC.....APPLICANT

VS.

1. THE CHIEF LAND REGISTRAR

2. THE HONOURABLE THE ATTORNEY GENERAL.....RESPONDENTS

AND

CHRISTOPHER AROMO MUSANDO INTERESTED PARTY

RULING

The ex-parte applicant Okech Okech Owuor brought this application by way of Notice of Motion under Section 3A of the Civil Procedure Act and Order 53 rule 3 of the Civil Procedure Rules and Section 8 of the Law Reform Act and Section 28 of the Land Adjudication Act seeking orders of mandamus to be issued directing the Chief Land Registrar to alter the land register in respect of land title No.Siaya/Koyeyo/2731 by canceling the name of Christopher Aromo Musando and inserting that of the ex-parte applicant Okech Okech Owuor as the registered absolute proprietor.

The grounds for seeking that order are set out on the face of the application.

The brief history of this matter is that, the name of the ex-parte applicant was cancelled from the adjudication record and that of Christopher Aromo Musando inserted as owner of the said parcel of land under what the applicant says were mysterious circumstances. The ex-parte applicant commenced objection proceedings this being objection proceeding No.443/86/87 Siaya District Koyeyo Adjudication Section which were determined against him by the relevant Adjudication Officer. The ex-parte applicant then appealed to the Minister for Lands vide Appeal No.67 of 1996 which again was decided against him.

Undeterred, the ex-parte applicant filed judicial review proceedings in the High Court of Kenya at Nairobi vide Misc. Application No. 1679 of 1999 whereafter the Minister's decision was quashed. However, the order quashing the said decision did not direct that the name of the applicant be inserted as the absolute registered proprietor in the register in respect of the suit land in place of that of Christopher Aromo Musando.

The ex-parte applicant moved the court in the said application to correct the situation but the court turned down his request on the ground that the court had no jurisdiction to order the alteration of an order given in Judicial review proceedings. As a result, the Chief Land Registrar has refused and/or neglected

to alter any records in respect of the said parcel of land unless specifically ordered by the court in that application. That is the basis of this application.

The application was opposed by the interested party and thereafter counsel were advised to file written submissions. As at the time of writing this ruling, the interested party had not filed any submissions and the court is unable to hold this matter any longer.

I have gone through the record and the submissions filed on behalf of the ex-parte applicant. The original proceedings sought an order of certiorari while the present proceedings seek an order of mandamus. When the order of certiorari was granted and the Minister's decision quashed, the interested party did not appeal against the said decision. It is now a matter of formality which has been sought by the ex-parte applicant to correct a situation whereby he has been disposed of the land that is rightly his.

From the facts exposed in the submission and also the proceedings leading to the order of certiorari, it is clear to me that the ex-parte applicant has established a case to warrant the granting of an order of mandamus.

I know that the interested party Christopher Aromo Musando has not filed any submissions in this matter. However, in earlier proceedings, he had averred that he bought the suit land from one Charles Owino Opuko. There was also a contradiction in his affidavit that he claimed ownership of land by way of ancestral disposition. Those two positions cannot co-exist in respect of the same parcel of land.

I am persuaded by the material before me that the ex-parte applicant has made a case sufficient to warrant the granting of the order of mandamus which I accordingly grant. It follows that the Chief Land Registrar is hereby directed to rectify the register by canceling the name of Christopher Aromo Musando and insert the name of the ex-parte applicant, Okech Okech Owuor as the rightful registered proprietor of title No.Siaya/Koyeyo/2731. The ex-parte applicant shall also have the costs of this application.

Orders accordingly.

Dated, signed and delivered at Nairobi this **24th** day of **September, 2009**.

A. MBOGHOLI MSAGHA

JUDGE

Mr. Gachichio for the Applicant