

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 32 OF 1991

SAMWEL MATEKA :::::::::::::::::::: APPELLANT/APPLICANT
V E R S U S
PATRICK SAWA WANYONYI :::::::::::::::::::: RESPONDENT

RULING

On 6.6.2005, a Notice of Motion dated 19-1-98 which was filed in court on 10.2.2003 came up for hearing before me. It was by the Appellant, Samwel Mateka. It was premised on sections 98 and 3A of the Civil Procedure Act, Cap 21 and it sought orders that the Respondent, Patrick Sawa Wanyonyi, be ordered to execute documents to facilitate sub-division and transfer of a parcel of two acres out of land title No. Malakisi/N. C. Namwela/ 312 to the name of the Appellant.

It seems judgement had on 18-6-92 been delivered by this court in which a declaration was made that the appellant had acquired title of the two acres by adverse possession and an order that the applicant be registered as the proprietor thereof as aforesaid. In his affidavit in support of the application, the applicant averred that the Respondent had failed to execute the necessary documents to effect subdivision of the said two acres and registration of same in the name of the Applicant, hence the application.

On his part, the Respondent objected to the application in his replying affidavit sworn on 15-11-2003 on flimsy grounds such as; that he intends to prosecute an application for review; that the applicant was doing things behind his back; that the decree cannot be executed in absence of counter-claim etc. These are irrelevancies that are designed to delay the process of the court. They are devoid any merit.

Mr. Maende, Advocate, who appeared for the applicant urged the court to grant the applicant the orders sought. The Respondent who had been served did not appear. I am satisfied that the applicant is entitled to the orders he seeks. I allow the application and grant the orders sought. I award the applicant the costs of the application.

Dated at Kakamega this 24th day of June, 2005.

G. B. M. KARIUKI

J U D G E