



**Songa (Suing as the Legal Administrator of the Estate of the Late Reuben Songa as well as Trustee to Mboya Songa also Deceased) v Indangasia & 4 others (Environment & Land Case 50 of 2014) [2023] KEELC 16061 (KLR) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16061 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 50 OF 2014  
DO OHUNGO, J  
MARCH 14, 2023**

**BETWEEN**

**AGNES SONGA (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE REUBEN SONGA AS WELL AS TRUSTEE TO MBOYA SONGA ALSO DECEASED) ..... PLAINTIFF**

**AND**

**SIMON LUKALIA INDANGASIA ..... 1<sup>ST</sup> DEFENDANT  
CHARLES SHISAVILU ..... 2<sup>ND</sup> DEFENDANT  
FESTO MMASI ..... 3<sup>RD</sup> DEFENDANT  
MOSES BATETA ..... 4<sup>TH</sup> DEFENDANT  
HON. THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff filed this suit on February 26, 2014. It was later dismissed for want of prosecution on October 19, 2017. Thereafter, the file remained dormant until June 14, 2022 when the first to third defendants filed Notice of Motion dated June 6, 2022, through which they sought an order that the Land Registrar Kakamega removes “the inhibition/prohibition placed on land parcel numbers South Kabras/Chemuche/2474; 2853; 2472; 2854 and 2475”. They further sought an order that the Land Registrar Kakamega issues certificates of search in respect of the said parcels.
2. The application is supported by an affidavit sworn by Charles Shisavilu who deposed that the applicants are the registered proprietors of the named parcels and that the Land Registrar Kakamega placed an inhibition/prohibition on the parcels and refused to issue certificates of search in respect of the parcels.



3. Although counsel for the plaintiff/respondent sought and was granted time to file a response as well as submissions, the plaintiff/respondent neither filed a response nor submissions. The applicants filed submissions in which they urged the court to allow the application.
4. I have considered the application, the supporting affidavit, and the submissions. The record herein shows that on March 5, 2015, E C Mwita, J made an order in the following terms:  
  
... an inhibition order is hereby issued inhibiting registration of any transaction on parcel numbers East Kabras/Chemuche/2852, 2853, and 2854 until further orders of the court.
5. It is manifest that the parcel numbers mentioned in the above order are different from those listed in the present application. The applicants have not availed anything to show that any inhibition was registered on the specific parcels pursuant to the order of March 5, 2015. In any case, the order of March 5, 2015 was an interlocutory order which lapsed upon dismissal of the suit on October 19, 2017.
6. Jurisdiction, as has stated severally, is everything. A court of law cannot take any valid step in the absence of jurisdiction. The court's jurisdiction flows from either the Constitution or legislation or both and it can only exercise jurisdiction as conferred on it by law. See Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR. Any order or step taken by a court in the absence of jurisdiction is a nullity. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.
7. One instance in which a court loses jurisdiction is when it is functus officio in so far as its power to determine the parties' respective claims in the matter goes. The dismissal of the suit on October 19, 2017 was final and conclusive. The court does not have jurisdiction to revoke or vary its decision or to revisit matters that were placed before it. Equally, the court does not have jurisdiction to enquire into matters that were not placed before it by the parties. See Raila Odinga & Others vs. IEBC & Others [2013] eKLR.
8. The reliefs sought in the application suggest that the applicants have a dispute with the Land Registrar Kakamega regarding an inhibition and refusal to issue certificates of search. The Land Registrar Kakamega is not a party to this case. It has not been shown that the Land Registrar's alleged actions and omissions have anything to do with the order of March 5, 2015, which order, as we have seen, lapsed upon dismissal of the suit on October 19, 2017.
9. If I were to entertain the present application, I would in essence re-open the proceedings herein with a view to considering granting orders that amount to modifying the decree herein. I do not have jurisdiction to do so and I decline the invitation to embark on such null and void exercise. Any proceedings filed in a court without jurisdiction are dead on arrival and cannot be remedied. See Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR. That is the fate that must befall Notice of Motion dated June 6, 2022.
10. In view of the foregoing, Notice of Motion dated June 6, 2022 is struck out. Since the plaintiff did not resist the application, I make no order as to costs.

**Dated, signed, and delivered at Kakamega this 14<sup>th</sup> day of March 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the plaintiff/respondent



The first to third defendants/applicants

Court Assistant: E. Juma

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