

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 278 OF 2014

VERONICAH AMBATSI.....PLAINTIFF/APPLICANT

VERSUS

FRANCIS JOMO SHIKHOLE

SCOLASTICA IMBOSA

FELIX KHAYUMBI MINYATTA.....DEFENDANTS/RESPONDENTS

RULING

The application is dated 4th October 2020 and is brought under Section 3A and 3 of the Civil Procedure Act, Article 159 of the Constitution of Kenya, 2010 seeking the following orders;

1. That this application be certified as urgent and be dispensed with on priority basis.
2. That this court be pleased to order all subdivisions arising from Butsotso/Shikoti/16462 and 16463 be cancelled and the original title number Butsotso/Shikoti/13352 be reinstated and a portion measuring 0.20 hectares be registered in the name of Musa Ombayo (Deceased) in fulfilment of a decree issued on 22nd November, 2018.
3. That the costs of this application be borne by the respondents.

It is based on the following grounds that there is a new and important evidence that was concealed during trial and was not available to the applicant but has now been discovered that the parcel of land known herein as Kakamega/Shikoti/13352 is subdivided contrary to the decree issued on 22nd November, 2018 to defeat justice. That on 22nd November, 2018 the court decreed that the 1st defendant do sign transfer a portion of land measuring 0.20 hectares from land parcel registration number Butsotso/Shikoti/13352 in favour of the deceased Musa Ombayo and in default the deputy registrar do sign transfer documents and thereafter succession to be undertaken. That the respondents have subdivided the land known herein as Butsotso/Shikoti/13352 which now reads Butsotso/Shikoti/16462 & 16463 to defeat execution of the decree. That applicant contends that the register of the land known herein as Butsotso/Shikoti/13352 was closed fraudulently during the pendency of the suit. That applicant has reason to believe that the respondents' actions were made in bad faith, is mischievous, and are contemptuous of the decree issued by this court and whose sole intent is to prevent the applicant from enjoying the fruits of her judgement. That in view of the foregoing, it is necessary that the decree issued be varied or reviewed to ensure that the property is succeeded as was decreed, but while having in mind that the registered for Butsotso/Shikoti/13352 was closed. That it is only in the interest of justice that the applicant prays the orders sought herein be granted to prevent further adverse dealings on subdivisions Butsotso/Shikoti/16462 & 16463 and have them cancelled in fulfilment of decree issued on 22nd June, 2018.

This court has considered the application and the submissions therein. I have perused the documents annexed to the application. It is a finding of fact that on 22nd November, 2018 the court decreed that the 1st defendant do sign transfer a portion of land measuring 0.20 hectares from in favour of the deceased Musa Ombayo and in default the deputy registrar do sign transfer documents and thereafter succession to be undertaken. The applicant has annexed a search certificate that indicates that the land known herein as Butsotso/Shikoti/13352 was subdivided on the 3rd September 2012 to create land parcels Nos. Butsotso/Shikoti/16462 & 16463. This suit was filed in 2014 which means the land parcel registration number Butsotso/Shikoti/13352 did not exist at the time of filing the suit. No evidence has been adduced as to who owns land parcels Nos. Butsotso/Shikoti/16462 & 16463. I find that the orders of the court issued on 22nd November, 2018 cannot be enforced and this court cannot arbitrarily make orders that all subdivisions arising from Butsotso/Shikoti/16462 and 16463 be cancelled and the original title number Butsotso/Shikoti/13352 be reinstated. I find this application is not merited and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 21ST APRIL 2021.

N.A. MATHEKA

JUDGE