

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 78 OF 2017

OCS SEREM.....APPLICANT

VERSUS

PATRICK MALONGO LIDOVOLLO.....PLAINTIFF

VERSUS

LUICE ASANG'ASA

ACTON MUSII KHALAMBUKHA

SABETI KHALAMBUKHA.....DEFENDANTS

RULING

The application is dated 18th January 2021 seeking the following orders:-

1. That the honourable court be released to grant the OCS Serem enough time as the court may please.
2. That the orders dated 16th December, 2020 be stayed as prayed.

It is based on the following grounds that the DCI Hamisi sub-county needs to conduct a full investigation into transfer of land parcel number Kakamega/Shamakhokho/1442. That the DCI Hamisi sub-county needs investigation into transfer of land parcel number Kakamega/Shamakhokho/369 which is believed to have not undergone full process of succession. That the leave of this honourable court is therefore needed for investigations.

The respondent submitted that by an order issued by this court dated 15th December 2020 the OCS Serem Police Station was directed to evict the defendants from land parcel number Kakamega/Shamakhokho/1442. That they are not a party to this case and have no locus standi. That it is only the Court of Appeal that can quash, review or set aside the said judgement.

This court has considered the application and submissions therein. Judgment was rendered in this matter on the 24th June 2020. The defendants were ordered to vacate the suit parcel land parcel number Kakamega/Shamakhokho/1442 within 90 days from the date of judgement and in default execution to issue. No appeal was filed within the stipulated time and leave to file appeal out of time was not granted. Orders of the court cannot be made in vain. This court has no jurisdiction to order investigations of a matter which it has passed judgement. This court made a decision based on the evidence before it at the material time. I concur with the respondent's submissions that it is only the Court of Appeal that can quash, review or set aside the said judgement. This application is frivolous and an abuse of the court process. The same is not merited and I dismiss it.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 20TH APRIL 2021.

N.A. MATHEKA

JUDGE