



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ELC PET. CASE NO. 33 OF 2020**

**HEZEKIAH OMONDI ADARA .....PETITIONER**

**VERSUS**

**THE CHIEF LAND REGISTRAR..... RESPONDENT**

**RULING/DIRECTIONS**

**I. Preliminary**

1. When parties appeared before this Honorable court on 18<sup>th</sup> January, 2022 they made their brief presentation. Arising from the submissions and the filed pleadings thereof, this Honorable Court felt it needful to render its directions on how the matter should proceed on from here onwards. From the onset, court noted that what is at stake here is the ownership to the suit property known as Land Reference No. 10121/1/MN whereby the Petitioner holds that he is the registered proprietor and the holder of the title deed having acquired it on 3<sup>rd</sup> May, 2003. The Original Certificate is in his custody. He has put a residential house on the said land and had lived there until recently.

2. Sometimes in the year, from the records, it's indicative that the Chief Land Registrar decided without any good reasons or justifiable cause to register a restriction against the suit land. This compelled the Plaintiff to institute this suit. The matter was adjudicated accordingly.

Subsequently, Judgment was delivered on 24<sup>th</sup> May, 2021 directing on the removal of the restrictions and a decree drawn and issued on 29<sup>th</sup> June, 2021.

3. On 29<sup>th</sup> September, 2021 the National Water Harvest and Storage Authority (Formerly Water Conservation and Pipeline Corporation) filed a Notice of Motion Application dated 29<sup>th</sup> September, 2021 seeking for stay of execution of the decree and enforcement to the suit. The Applicant claimed they only became aware of the instant proceedings when it was notified by the 2<sup>nd</sup> Respondent the Chief Land Registrar of the Decree – Held the 1<sup>st</sup> Respondent is in the process of disposing it to a 3<sup>rd</sup> Party thereby muddling with the suit premises. They claimed to have been in occupation of the larger Shanzu FR 290/112 within Shanzu Ward from where the land Reference 10121/I/MN has been illegally and irregularly hired off to the 1<sup>st</sup> Respondent since the year 1989.

4. On 6<sup>th</sup> October, 2021 the Petitioner filed a Notice of Motion application dated 31<sup>st</sup> August, 2021 seeking to commit the Land Registrar Samuel Mwangi to Civil Jail for contempt of court of the Decree and judgment of 24<sup>th</sup> May, 2021 – On 28<sup>th</sup> October, 2021 the Petitioner filed a Replying Affidavit to the Notice of Motion application dated 29<sup>th</sup> September, 2021 vide a Replying Affidavit and further Affidavit dated 29<sup>th</sup> October, 2021 and 3<sup>rd</sup> November, 2021

**II. THE DIRECTIONS**

It is clear that there is an issue to be determined by this Honorable court being the exact location size and position of these parcels of land which is in dispute herein. These are between the parcels of land known as:-

- a. Land Reference No. FR. NO. 290/112/within Shanzu and
- b. Land Reference No. 10121/I/MN

Therefore in order to ameliorate the situation I do direct as follows:-

- i. The Deputy Registrar of this Honorable Court, the Coastal Regional Land Surveyor Mombasa and in the presence of all the parties be and is hereby authorized and directed to

- a. To undertake a detailed historical background check on all the parcels of land known as Land Reference No. FR. NO. 290/112/ within Shanzu and Land Reference No. 10121/I/MN respectively through an intensive and elaborate desk and literature review obtained from the Director of Survey Nairobi, the Coastal Regional Land Survey offices Mombasa and the offices of the Land Registrar at Mombasa.
- b. To undertake a critical and detailed surveying exercise physically on the two parcels of land on 4<sup>th</sup> March, 2022 by establishing all the necessary cadastral coordinates and beacons on the land in relation with the extracting land survey maps from the Directorate of survey of Kenya and elsewhere.
- c. To prepare and submit a comprehensive survey report bearing an exercise conducted, sources of information, the methodology applied, observations the people on it, developments challenges and the recommendations as pertains in connection with and/or relations to the aforesaid parcels of land to this Honorable Court on or before 31<sup>st</sup> March, 2022.
- d. That the parties herein to be at liberty to engage their own independent and private qualified surveyors to accompany the duly appointed Government Land Surveyor during the physical Land Surveying and site visit.
- e. That the Parties to be furnished with a copy of the prepared and final land survey report.
- f. That the Matter to be mentioned on 4<sup>th</sup> April, 2022 for three purposes of :-
  - i. Confirmation and/or adherence of these directions/Order.
  - ii. The representation of the survey report to court by the survey and adoption.
  - iii. Taking further direction on the matter.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT THIS.....8TH ...DAY OF .....FEBRUARY.....  
....., 2022.**

**HON. JUSTICE L.L. NAIKUNI**

**JUDGE**

**(ELC- MOMBASA)**

***In the presence of:-***

*M/s. Yumna – the Court Assistant*

*Mr. Adalla Advocate for the Plaintiff/Respondent*

*Mr. Omollo Advocate holding brief for Mrs. Mwangi Advocate for the Defendant/Applicant*

*Mrs. Winnie Waswa Senior Principal State Counsel for the Hon. Attorney General*