



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT KERICHO

ELC CASE NO. 11 OF 2020 (OS)

BENARD KIPRONO BETT.....PLAINTIFF/APPLICANT

VERSUS

BENARD KIPRONO KOECH.....DEFENDANT/RESPONDENT

AND

IN THE MATTER OF KERICHO CMCC No. 185 of 2018 BEFORE THE CHIEF MAGISTRATE

AND

IN THE MATTER OF APPLICATION FOR ISSUANCE OF VESTING ORDERS TO THE

APPLICANT AS PROPRIETOR OF LR No. KERICHO/CHEMOIBEN/693

RULING

1. Before me for determination is an originating Summons dated the 9th March 2020 brought under the provisions of Order 37 Rule 1 & 3 of the Civil Procedure Rules in which the Applicant seeks vesting orders to be issued declaring all that parcel of land known and described as LR No. Kericho/Chemoiben/693 situate within Litein belonging to the Applicant, pursuant to the instruction issued by the Court in Kericho CMCC No. 185 of 2018 in Thomas Sambu vs Bernard Koech.
2. The application was supported on the grounds on the face of it as well as on the affidavit sworn by Bernard Kiprono Bett the Plaintiff/Applicant herein.
3. The application was opposed by the Respondent's replying affidavit dated the 13th April 2020 to the effect that he had not participated in the subordinate court's proceedings but had only become aware of the judgment, the decree and execution by way of sale of his land title No. Kericho/Chemoiben/693, after he had been served with the Originating Summons herein. That he had not been served with a notice of entry of judgment, notice to show cause or a notice for hearing of the terms of the sale.
4. The Respondent further deponed that he had been surprised by the present application, there having been a consent recorded in this court via ELC No. 6 of 2017 in Bernard Kiprono Bett vs Bernard Kiprono Koech (as per the attached annexure) whereby he was to transfer to the Applicant a portion measuring 0.25 acres out of land title No. Kericho/Chemoiben/693 the subject parcel herein.
5. That since he had not participated in the hearing of the matter before the subordinate court in Kericho CMCC No. 185 of 2018, he had been prevented from having a fair hearing which was contrary to the provisions of the Constitution. That he had since filed an application before the same court to set aside its judgment and all consequential orders that led to the purported sale of No. Kericho/Chemoiben/693. That it was therefore only fair that the hearing of the present matter awaits the outcome of the said application.
6. The application was disposed of by way of written submissions to which the Applicant submitted that the Respondent's application to set aside the trial court's judgment was heard and determined vide a ruling dated the 18th December 2020 wherein the same had been dismissed with costs. That the present application therefore remained unchallenged and should be allowed as prayed, with costs.
7. The Respondent did not file any submissions.

Determination.

8. The background leading to this application which is not in dispute is that pursuant to instructions issued by the Subordinate Court in Kericho CMCC No. 185 of 2018, in execution of the decree thereon, is that on the 17th January 2020, the Applicant herein having emerged as the highest bidder, purchased the suit land No. Kericho/Chemoiben/693 measuring 0.52 hectares, through a public auction that had been advertised by M/S Indomitable Auctioneers on the 12th January 2020. That thereafter, he had paid a sum of Ksh 325,500/= being 25% of the purchase price and upon completion of payment of the balance of Ksh. 1,087,500/= he had been issued with a certificate of sale on the 3rd February 2020 determining the sale as absolute.

9. Following the sequence of events herein above, the respondent herein filed an application dated the 29th April 2020 before the trial court seeking to set aside its judgment Decree and all other consequential orders. The said application also sought to inhibit the county land registrar from registering any dealings in respect of the suit land and from transferring the same to the Applicant. That further the respondents sought for injunctive orders against the Applicant in dealing whatsoever with the suit parcel of land. The application was heard and dismissed with costs vide the court's ruling of 18th December 2020. No Appeal was lodged.

10. The Applicant has now come before court seeking vesting orders declaring him the proprietor all that parcel of land known and described as LR No. Kericho/Chemoiben/693 situate within Litein.

11. Although the Respondent herein had deponed that he had not participated in the subordinate court's proceedings and had only become aware of the judgment, decree and execution by way of sale of his land title No. Kericho/Chemoiben/693 when he was served with the Originating Summons herein, and further that he had not been served with a notice of entry of judgment, notice to show cause and a notice for the hearing of the terms of the sale, yet it is nowhere on record that he sought to have the said proceedings annulled through an appeal process and no appeal, to the best of my knowledge has been filed almost two years down the line, so as to enable the court investigate into the Respondent's allegations which as of now remain mere allegations. This is not an application for review and neither is this Court sitting as an Appellate Court in the matter.

12. The auction having been a court initiated sale, wherein the Applicant fulfilled the terms and conditions of sale, and there having not been an Appeal filed challenging the same, accordingly, I am satisfied that the reasons advanced for the vesting order to issue are justified and the application dated 9th March 2020 is allowed as prayed with orders that:

i. A vesting order be and is hereby issued declaring all that parcel of land known and described as LR No. Kericho/Chemoiben/693 situate within Litein to be registered to the **Applicant herein** Benard Kiprono Bett

ii. Costs in the cause.

Dated and delivered via Teams Microsoft at Kericho this 11th day of November 2021.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE