



REPUBLIC OF KENYA



**Samadi v Omukanda & 2 others (Civil Suit 27 of 1998)
[2024] KEHC 14582 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL SUIT 27 OF 1998
SC CHIRCHIR, J
NOVEMBER 19, 2024**

BETWEEN

JEREMIAH LUVANDALE SAMADI PLAINTIFF

AND

ELIZABETH OMUKANDA 1ST DEFENDANT

ALPHONCE C OMUKANDA 2ND DEFENDANT

PASCAL OMUKANDA 3RD DEFENDANT

RULING

1. Pascal Omukanda, the 3rd defendant/Applicant herein has filed the Notice of Motion dated 27th March 2023 seeking for the following orders;
 - a. That M/S Akwala & Co. Advocates be granted leave to come on record in this suit for the 3rd respondent in the place of M/S Kiarie & Co. Advocates.
 - b. The prohibitory or inhibition order issued herein on 3rd August 2000 prohibiting and or inhibiting any dealings on land parcel No. LR Butso/ Shikoti/1050 be set aside/ lifted and or vacated.
 - c. Costs of this application be in the cause.
2. The Applicant has been brought under section 70 of the *Land registration Act*, section 1A & 3A of the *Civil Procedure Act* and Order 9 Rule 9 & Order 51 rule 1 of the *Civil Procedure Rules*. It is supported by the grounds appearing on the face of the Application as well as the Affidavit of the Applicant.



The Applicant's case

3. The applicant states that on 3rd August 2000 this court issued a prohibitory order prohibiting any dealings in respect of the Land parcel No. Butso/ Shikoti/1050.(The suit property) The order was issued upon an Application by the respondent and was to subsist the determination of the suit herein. The suit property is registered in the joint names of Alphonse Chibole Omukanda (now deceased) and the Applicant.
4. It is further stated that on 27th April 2005, the respondent withdrew the suit , effectively bringing the suit to an end. That despite the conclusion of the suit , the prohibitory order has never been lifted.
5. The court is further informed that succession proceedings have been carried out in respect of the estate of Alphonse Chibole Omukanda (the then 2nd Applicant) and there is need to distribute his estate ,part of which is a portion of the suit property. It is stated that the certificate of confirmation of grant in respect of the said Alphonse's estate cannot be registered against the suit property because of the existence of the aforesaid prohibitory order.
6. He now seeks the above stated orders to enable the land Registrar to register the certificate of confirmation of grant as aforesaid.

The Respondent's case

7. The respondent opposes the Application. He states that the purpose of placing a prohibitory order is yet to be achieved; that the purpose was to protect the interests of the respondent and he stands to suffer irreparable harm if the order is lifted.

Applicant's submissions

8. The Applicant submits that the order on 3/8/2000 by Justice Tanui was to subsist the determination of the suit; that on 25/4/2005 the plaintiff withdrew the suit, automatically ending it. It is further submitted that the prohibitory order was to serve no other purpose, save to preserve the property during the pendency of the suit.
9. The Applicant further argues that notwithstanding the respondent's allegation that the purpose of the order has not been achieved, he has not stated what that purpose is.
10. The respondent did not file any submissions

Analysis and determination

11. On 20 /2/1998, the respondent brought this suit by way of originating summons seeking *inter alia* to be declared the owner of the suit property. Through notice of Motion dated 20th July 2000, and filed on the same date the respondent further sought for a prohibitory order barring any dealings on the suit property. On 22nd August 2000, Justice Tanui orders as follows: "let an order of inhibition issue to prohibit any dealings on title No. Butso/ Shikoti/1050 pending the hearing and determination of this suit"
12. On 21st May 2008, the parties appeared before the Deputy Registrar and the respondent withdrew the suit and the Applicants herein were awarded costs.
13. The withdrawal of the suit effectively terminated it . The respondent cannot claim that an order issued under a suit that has already been withdrawn is still serving a certain purpose. That order has no legs . It died with the suit. The respondent is simply being mischievous.



14. The prayer for representation by Akwala and company is also warranted as the Applicants were being represented by a different firm of Advocates during the pendency of the suit
15. The Application is warranted. Consequently I hereby issue orders as follows:
 - a). M/S Akwala and Company Advocates are hereby granted leave to come on record for the Applicants in place of M/S Kiarie & CO Advocates.
 - b). The inhibition order issued on 3rd August 2000 prohibiting any dealings on Title No. Butso/ Shikoti/1050 is hereby lifted
 - c). The Applicants shall have the costs of this Application.

DATED , SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF NOVEMBER 2024.

S. CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant.

Mr. Nyikuli for Mr Kundu for the Applicant.

