



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ENVIRONMENT CASE NO. 82 OF 2015

MODE OF TRACK.....FAST TRACK

**WILSON KAIGA GIDION GUDAHI (Suing as the Legal Representative of the Estate of the late
GIDEON GUDAHI KAHIGA).....PLAINTIFF**

VERSUS

DANIEL LIVOI GIDEON.....DEFENDANT

R U L I N G

By a ruling dated 21st November 2019 and which was pursuant to the plaintiff's application dated 26th September 2019, this Court made various orders with regard to survey and sub – division of the land parcel **NO BUNGOMA/ KAMAKOIWA/577**. Order number (e) was to the following effect: -

(e) "That the Officer Commanding Station (OCS) MUKUYUNI POLICE STATION to provide security during the exercise of the said survey."

The order was duly extracted. The name of the Police Station had been provided by the plaintiff himself in his application. It is now apparent that **MUKUYUNI** is infact a **POLICE POST** and not a **POLICE STATION** and when the plaintiff served the order to the **OFFICER COMMANDING POLICE DIVISION** in **BUNGOMA**, he was advised that the order ought to have been directed to the **OFFICER COMMANDING MBAKALO POLICE STATION** which is the Police Station within the jurisdiction of the land in dispute.

The plaintiff has therefore again moved to this Court by his Notice of Motion dated 17th December 2019 seeking the following substantive orders: -

(a) Spent

(b) The Honourable Court be pleased to review and/or vary the orders comprised in its ruling dated 21st November 2019 as hereunder: -

1: The O.C.S MBAKALO POLICE STATION be ordered to provide security during the visit and the exercise of the survey process by the land surveyor – Bungoma County and Land Registrar Bungoma County to the land parcel number BUNGOMA/KAMAKOIWA/577 instead of the O.C.S MUKUYUNI POLICE STATION.

(c) Costs of this application be provided for.

The application is premised under the provisions of **Sections 1, 1A, 3 and 3A of the Civil Procedure Act** and supported by the plaintiff's affidavit the gist of which I have already summarized above.

The application, just like the previous application dated 26th September 2019, was not contested.

The Applicant cites the provisions of **Section 3A of the Civil Procedure Act** which provides that: -

"Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for

the ends of justice or to prevent the abuse of the process of the Court.”

Although **Order 45 Rule 1 of the Civil Procedure Rules** was not cited, it also empowers this Court to review its orders where there is **“some mistake or error apparent on the face of the record”** or **“for any other sufficient reason.”**

It is clear from the plaintiff’s supporting affidavit that when he filed the application dated 26th September 2019, he mistakenly sought orders directed at the Officer Commanding **MUKUYUNI POLICE STATION**. It has now been pointed out to him that the proper officer to whom the orders should be directed is the Officer Commanding **MBAKALO POLICE STATION**.

In the circumstances, this Court’s ruling dated 21st November 2019 is varied in paragraph 2 to read as follows: -

2: The OCS MBAKALO POLICE STATION to provide security during the exercise.

There shall be no order as to costs.

Boaz N. Olao.

J U D G E

23rd January 2020.

Ruling dated, delivered and signed in Open Court at Bungoma this 23rd day of January 2020.

Plaintiff present

Defendant absent

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

23rd January 2020.