



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

E.L.C NO. 6 OF 1997

JENTA MAKOKHA BULUMA.....PLAINTIFF

VERSUS

ESAU NAMULANDA.....1ST DEFENDANT

BENARD OKWARO BALONGO.....2ND DEFENDANT

RULING

1. The application for determination before me is a motion on notice dated 18th January, 2019 and filed on 23rd January, 2019. The applicant – **JENTA MAKOKHA BULUMA** – is seeking various orders against the respondents – **ESAU NAMULANDA** and **BENARD OKWARA BALONGO**. The application came with four (4) prayers but prayers 1 and 3 are now moot, having been for consideration at an earlier stage. The prayers for consideration are now two – prayers 2 and 4 – and they are as follows:

Prayer 2: That an order of injunction be issued restraining the defendants and their agents or anybody acting for them from any act of intending to sell by public auction land parcel NO BUKHAYO/KISIKO/370

Prayer 4: That costs be provided for.

The defendants named in prayer 2 are actually the respondents. The applicant is the plaintiff.

2. The applicant avers that she has a grant in respect of her late husband's estate and that she will suffer irreparably if the order sought is not granted. She talked of an earlier notice to show cause which this court rejected. That notice was dated 23rd August, 2017 and the court is said to have rejected it after she filed an objection. She talks of yet another notice to show cause which in her view is just like the one that was rejected. That second notice is dated 30th November, 2018. According to her, the respondents want to sell land parcel **NO BUKHAYO/KISOKO/370** which is part of the estate of her late husband – **RICHARD BULUMA**.

3. The respondents' responded to the application vide a replying affidavit dated 29th May, 2019 filed in court on the same date. According to the respondents, the notice to show cause which the applicant is challenging is properly and lawfully before court. The land said by the applicant to belong to the estate of her late husband is said to be registered in the names of two people – her late husband, **Richard Buluma**, and **Cosmus Buluma**, who is a judgement debtor in this matter.

4. The applicant is the administrator of the estate of her late husband. Her late husband owns only half share of the land. The other half is owned by Cosmus Buluma, who is alive. It is Cosmus Buluma's half that the respondents seek to sell in order to realise their costs awarded in this case. The applicant was faulted for misrepresenting to the court that the grant she has relates to the whole parcel of land. The respondents averred that their intention is not to sell the half owned by the applicant's late husband. They are after the half owned by **COSMUS BULUMA**, who is still alive. The earlier notice mentioned by the applicant was said to have been rejected by the court because it had not clarified that it is **COSMUS BULUMA'S** share that the respondents were seeking to sell.

5. The court was also said to have given liberty to the respondents to start the process afresh. This was done vide an earlier ruling by the court on the same subject matter. The ruling was annexed to the response and is dated 30th October, 2018.

6. The application was canvassed by way of written submissions. The applicant's submissions were filed on 25th June, 2019. She submitted that she had objected to an earlier notice to show cause dated 23rd June, 2017. The court allowed her objection. The respondents then filed another notice to show cause dated 30th November, 2018. That is why she filed the application now under consideration.

7. According to the applicant the notice to show cause dated 30th November, 2018 is just like the earlier that she had challenged. According to her, the matter is *res-judicata* as the orders that upheld her earlier objection still stand. She submitted that her application is meritorious.

8. The respondents' submissions were filed on 20th June, 2019. They submitted that the application herein is misplaced. The notice is directed at **COSMUS BULUMA** who was an unsuccessful appellant in this case. The aim is to sell **COSMUS BULUMA'S** half share in land parcel **NO BUKHAYO/KISOKO/370**. And that is intended to happen because **COSMUS BULUMA** failed to honour his undertaking to pay costs. The applicant is said to have letters of administration in respect of the estate of her late husband – **RICHARD BULUMA** – who owned only half share of the land. The respondents are not interested in that share.

9. The applicants earlier objection was said to have been upheld by the court because the earlier notice to show cause had not specified that what was intended to be sold was the half share belonging to **COSMUS**. The respondent submitted that the court expressed its position that the process could be started afresh. The application brought by the applicant was said to have no merits at all.

10. I have considered the application, the response made, and the rival submissions. I have had a look into the documents made available by each side. The respondents have in the past tried unsuccessfully to proceed with execution in this matter. Land parcel **NO BUKHAYO/KISOKO/370** is owned by two people – **RICHARD BULUMA** and **COSMUS BULUMA**. Richard Buluma is deceased. He was the applicant's husband. Richard owned half of the land. Cosmus Buluma owns the other half.

11. In the respondents earlier attempt to sell the half owned by **COSMUS BULUMA**, they had blundered. They had not indicated that what they wanted to sell was only the half owned by **COSMUS BULUMA**. The relevant documents indicated that the whole parcel of land would be sold. That is why the court upheld the applicant's objection. It did so vide its ruling dated 30th October, 2018. It is clear that the respondents went back to the drawing board and started the process afresh. This time round, the applicant is not lucky. The notice to show cause dated 30th November, 2018 is clear that it is **COSMUS BULUMA'S** half share that is intended to be sold. The applicant does not represent the interests of **COSMUS BULUMA**. She represents the interests of her late husband and those interests only extend to the half-share he owned. Cosmus Buluma is alive and can speak for himself. The applicant is causing unwarranted confusion by pretending that the whole parcel of land forms part of the estate of her late husband. She is trying to mislead the court.

12. It is not true to say that the issue is *res-judicata*. The court's ruling was clear that the respondents could start the process afresh. That is what they did. And I agree with the respondents that the applicant is trying to misrepresent to the court that the grant she has is for the whole parcel of land. The records made available to court do not confirm that position. In fact they confirm what the respondents averred. The respondents are clear that they are not interested in Richard Buluma's share. They are after Cosmus Buluma's share and in my view, the applicant has no business standing in their way.

13. The upshot, when all is considered, is that the application under consideration is one without merits. I hereby dismiss it with costs.

Dated and signed at Kericho this 20th day of May, 2020.

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A. K. KANIARU

JUDGE

Dated, signed and delivered at Busia this 27th day of May, 2020.

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A. OMOLLO

JUDGE