



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CIVIL APPLICATION NO.213 OF 2004

BENSON KAKAI NAMISI.....1ST APPLICANT

JOHNSON MUKASA NAMISI.....2ND APPLICANT

VERSUS

STUFFORD MUKASA NAMISI.....1ST RESPONDENT

REPUBLIC.....2ND RESPONDENT

RULING

The dispute between the Parties herein was on 17th March 2015 referred to arbitration by consent of the Parties. An award was subsequently filed in Court on 15th June 2015 and read to the Parties on 17th June 2015. An application by the Plaintiffs to have the said award reviewed was dismissed with costs by **MUKUNYA J** in a ruling delivered on 29th September 2016. The Judge also entered judgement in terms of the said award.

The record shows that on 20th December 2016 the Plaintiffs filed a Notice of Motion seeking a stay of execution of that decree pending the hearing and determination of **COURT OF APPEAL CIVIL APPEAL NO.108 of 2016** pending a KISUMU arising out of the Orders issued by **MUKUNYA J** on 29th September 2016. That application is yet to be canvassed to-date.

I now have before me the application by **STUFFORD MUKASA NAMISI** (the Applicant herein), seeking the main order that the Respondent do sign the transfer forms and provide all the necessary documentation to enable the transfer of seven(7) acres out of land parcel NO. NDIVISI/NDIVISI/1117 and 1118 to the Applicant in terms of the award which was made a judgement of this Court on 15th June 2015 and in default, the Deputy Registrar of this Court be authorized to sign the said documents on behalf of the Respondents. The Applicant further seeks orders that the Respondents be compelled to sub-divide the said land as per the said award and in default, the District Land Surveyor Bungoma and the Land Registrar be ordered to do so.

The application is based on the grounds set out therein and is also supported by the Applicant's affidavit dated 13th November 2017.

The gravamen of the application is that following the adoption of the award as a judgement of this Court in the ruling by **MUKUNYA J** delivered on 15th June 2015, the Respondents have refused to transfer seven(7) acres out of land parcels NO. NDIVISI/NDIVISI/1117 and 1118 to the Applicant as ordered and the Land Registrar has also refused to comply.

I have perused the award that was adopted as a judgement of this Court by **MUKUNYA J**. It reads as follows in the paragraph that is relevant to this application:

(b) "That all factors standing, the title deed NDIVISI/NDIVISI/1117 and NDIVISI/NDIVISI/1118 respectively be cancelled by the Honourable Court. The new title deeds to be issued in three portions as stated below:

- **Mr. JOHNSON MUKASA NAMISI – 14.5 Acres**
- **Mr. BESON KAKAI NAMISI – 12.5 Acres**
- **Mr. STUFFORD MUKASA NAMISI – 7.0 Acres**

(c). That a Government Surveyor be engaged to apportion the land."

That award is now a judgment of this Court and must be complied with until set aside on appeal or review. That has not been done. Indeed a

decree ought to have followed but that appears not to have been done. The application is not opposed and when it came up before me on 2nd July 2018, Mr. KUNDU for the Respondents drew my attention to the pending appeal in the Court of Appeal. That Appeal cannot, in the absence of any Orders of stay, prevent the Applicant from prosecuting his application which, as I have already indicated above, is not opposed as the Respondents have not filed any replying affidavit or grounds of opposition thereto.

In the circumstances, the Applicant's Notice of Motion dated 13th November 2017 is hereby allowed in the following terms:

- 1. The Respondents to curv from land parcels NO. NDIVISI/NDIVISI/1117 and NDIVISI/NDIVISI/1118 seven(7) acres to be transferred to the Applicant within thirty(30) days of this ruling.**
- 2. In default, the Land Surveyor and Land Registrar Bungoma to demarcate the said land and register seven(7) acres in the names of the Applicant who shall meet the relevant fees.**
- 3. Should the Respondents refuse to sign the transfer and other relevant documents, the Deputy Registrar of this Court shall be at liberty to do so on their behalf.**
- 4. No Order as to costs.**

BOAZ N. OLAO

JUDGE

19TH JULY 2018

Ruling dated, delivered and signed in open Court this 19th day of July 2018 at Bungoma.

1st Respondent present

Applicant absent

2nd Respondent absent

BOAZ N. OLAO

JUDGE

19TH JULY 2018