



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISC. APPLICATION NO.211 OF 2012

AND

IN THE MATTER OF THE BUTULA LAND DISPUTE TRIBUNAL

AND

CHIEF MAGISTRATE’S COURT LAND CASE NO.38 OF 2012

AND IN THE MATTER OF L.R NO.MARACHI/ELUKONGO/2454

BETWEEN

REPUBLICAPPLICANT

VERSUS

BUTULA LAND DISPUTE TRIBUNALRESPONDENT

AND

FLORENCE JUMA WANGATIA.....APPLICANT/INTERESTED PARTY

**IN THE MATTER OF JOSEPHAT MBEMBE OBONYO RESPONDENT/EXPARTE-
APPLICANT**

R U L I N G

1. The application before me is a Notice of Motion filed here on 2/6/2016 by the Applicant/Interested party – **FLORENCE JUMA WANGATIA** – against the Respondent/Exparte Applicant – **JOSEPHAT MBEMBE OBONYO**. It is brought under Order 45 Rule 1, Order 53 Rules 3,4,5 and 7 of Civil Procedure Rules, 2010 and all other enabling laws. The prayers sought are as follows:

Prayer 1: That the proceedings and orders of this Honourable Court dated 22/3/2013 be reviewed, set aside and/or vacated.

Prayer 2: That the order issued by the Chief Magistrate’s Court, Busia, dated19/12/2012 be reinstated and execution allowed.

Prayer 3: That the costs of this application be provided for.

2. From the application it appears clear that the Respondent was granted leave to file a judicial application

on 19/3/2013. That application was to be filed within 21 days after the order was granted. It is over three years now and it has not been filed. The order granted on 19/3/2013 also stayed execution of an earlier award that emanated from Land Dispute tribunal proceedings. The Applicant now wants the order and the stay vacated, reviewed and/or set aside.

3. It appears clear that the Applicant had bought from the Respondent a portion of land from land parcel No.L.R **MARACHI/ELUKONGO/2458**. She paid the full purchase price and the process of transferring the portion started. The process then stalled when the Respondent apparently changed his mind about transfer.

4. The Respondents response is in a replying affidavit filed here on 1/8/2016. He admitted selling land to the Applicant. He admitted allowing settlement on the land by the Applicant. He said however that he sold one acre and not one and a half acres. That, in his view, is where the problem is. He expressed willingness to transfer one acre.

5. The application was heard inter partes on 7/12/2016. The Applicant reiterated her averments that the Respondent had failed to file the necessary application within the period granted and/or at all. The Respondent did not respond to this averment. He instead said that he sold one acre to the Applicant and she wants 1 ½ acres

6. This is a simple and straight forward matter. The Respondent was granted leave to file a judicial review application to ask for an order for CERTIORARI. That leave was granted on 19/3/2013 and it expressly stated that the requisite application had to be filed within 21 days. The Respondent did not file the application within that period. He has not filed it todate. In his responses to the application herein, he failed to respond to the issue.

7. It is necessary to allow the Applicants application as the stay granted together with the order seem to be holding her in suspense. This state of affairs can not be allowed to continue indefinitely. There is sufficient reason to review that order with a view to vacating it. The order granted on 19/3/2013 is hereby reviewed and vacated. I realize that prayer 2 required that the order of the lower Court be reinstated. I think that is the order that endorsed the decision of the tribunal that the Respondent was seeking to quash. Once the stay is removed/vacated as has been done, there is nothing to affect the lower Court order. The order remains in force and it is upon the Applicant to know what to do with it. Prayer 2 is therefore idle and superfluous. Cost of this application are granted to the Applicant.

A.K KANIARU

J U D G E

DATED AND DELIVERED ON 25TH DAY OF JANUARY 2017.

IN THE PRESENCE OF:

APPLICANT - PRESENT

RESPONDENT - PRESENT

APPLICANT/INTERESTED PARTY – N/A

J U D G E