

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 64 OF 2015

ANERIKO MASIKA SIMIYUPLAINTIFF

VERSUS

REDEMTOR NASIKE SIMATIDEFENDANT

RULING

[1] The genesis of this case and application was land parcel East Bukusu/South Kanduyi/7029. This land was owned by Aneriko M. Simiyu. It comprised of 0.44 hectares. The husband of Redemptor Nasike Simati one Liborio Masinde Simati filed a suit in Bungoma Principal Magistrate's Court case No. 469 of 1995 against Aneriko Mantia Simiyu wanting him to move and vacate out of the said land. He cited the reason for his case as a sale. The case was transferred by the magistrate to the Land Disputes Tribunal for hearing and final determination.

[2] The tribunal heard the case and granted the land to the said Liborio Masinde Simati. An Appeal to the Provincial Disputes Tribunal was not successful. An appeal to the High Court Bungoma was successful. This land was abutting L.R. No. East Bukusu/South Kanduyi/15 owned by the respondent's husband. Through a suspect procedure a vesting order was issued by the Deputy Registrar of this court, the whole of the said land East Bukusu/South Kanduyi/15 was vested to the applicant.

The said Deputy Registrar signed mutation forms which curved out a piece of land measuring 0.97 hectares from LR East Bukusu/South Kanduyi/15 and added it to E.Bukusu South Kanduyi/7029 increasing it from 0.44 hectares to 1.41 hectares. The applicant then sub divided his land in 3 portions L.R East Bukusu/South Kanduyi/8050, East Bukusu/South Kanduyi/8051 and East Bukusu/South Kanduyi/8057.

[3] The respondent fought the said vesting order and successfully had the same cancelled on 22nd day of November 2000. The respondent in an application for review in Civil Appeal No. 94/2099 complained that despite the cancellation of the vesting order, the records kept by the land office parcel file indicated that LR No. East Bukusu/South Kanduyi/8051(one of the resultant sub division of East Bukusu/South Kanduyi 7029 comprising of 0.44 hectares) was still indicating that it was 1.41 hectares. That it made parcel No. 8051 encroach on East Bukusu/South Kanduyi/15 with a portion measuring 0.97 hectares. The review was upheld by this court Serгон J.

[4] The applicant herein appealed to the Court of Appeal and the Appeal was dismissed on 24/9/2010 with costs to the respondent.

[5] The applicant has filed this case still alleging that he is the proprietor of east Bukusu/South Kanduyi/8051 comprising of 1.41 hectares. He alleges that it borders East Bukusu/South Kanduyi/15 measuring 31 acres.

[6] The issue of East Bukusu/South Kanduyi/7029 comprising of 0.44 hectares is settled by the court. The applicant had fraudulently curved out 0.79 hectares from East Bukusu/South Kanduyi/15 to make parcel 7029 to be 1.41 hectares. From this parcel which was 1.41 hectares he curved out parcels East Bukusu/South Kanduyi/8050, 8051 and 8057. The court has ordered the portion of 0.79 to be returned to East Bukusu/South Kanduyi/15 which is 33 acres and not 31 acres as the applicant alleges. Parcels East Bukusu/South Kanduyi/7029, 8050, 8051 and 8057 still remain on 0.44 hectares.

The issue raised by the applicant is res judicata. The same having been settled by this Court and the Court of Appeal. The suit filed herein is already determined by the Court. The application herein is struck out. It has no merits at all and since it is predicated on a suit that is res judicata. This suit is also struck out with costs to the respondent.

It is so ordered.

Dated at Bungoma this 10th day of March 2016.

S.MUKUNYA

JUDGE