



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 24 OF 2012

MARY WANJIRU MWANIKI.....1ST PLAINTIFF

MICHEL NDUNGU MWANIKI.....2ND PLAINTIFF

VERSUS

PETER ANJEYO VOHYA.....1ST DEFENDANT

CRESTERS KULOBA WAMBU.....2ND DEFENDANT

AND

PAUL KAMAU MWANGI.....INTERESTED PARTY

RULING

In my ruling dated 22nd November 2018, I dealt with two applications. The first one was the Interested Party's application dated 11th September 2017 while the second one was the 2nd defendant's application dated 16th January 2018.

In the said ruling, I allowed the Interested Party's application dated 11th September 2017 but made the following order in paragraph 5 of the same: -

“Meanwhile, the 2nd defendant is at liberty to take a date to prosecute his application dated 16th January 2018.”

When the matter came up before me on 20th February 2020, I indicated that the application dated 16th January 2018 had infact already been dealt with in the earlier ruling delivered on 22nd November 2018. I then proceeded suo motto to dismiss it.

MR BW'ONCHIRI has now drawn my attention to the fact that the application dated 16th January 2018 is still pending. That position is shared both by **MR OBWATINYA** for the 1st defendant assisted by **MR WAGONDA**. Both **MR ONYANDO** for the plaintiff and **MR KUNDU** for the Interested Party were not present in Court.

I have perused my ruling dated 22nd November 2020, the Judgment of **OMOLLO J** delivered on 4th November 2014 and my orders of 20th February 2020. It is correct that the orders of 20th February 2020 dismissing the application dated 16th January 2018 were made in error. The application dated 16th January 2018 had two limbs i.e. –

1. That this Court find that this suit is res – judicata BUNGOMA HIGH COURT CIVIL APPEAL No 43 of 2006 and should be struck out.

2. That this suit contravenes the provisions of Section 18 of the Land Registration Act and should therefore be struck out.

Having perused my ruling dated 22nd November 2018, it has become clear to me that whereas I dealt with the second limb of the 2nd defendant's application dated 16th January 2018, I did not make any decision on the first limb of that application. That was an error which this Court must therefore correct by vacating the orders issued suo motto on 20th February 2020.

Accordingly, I make the following orders: -

1. The orders issued on 20th February 2020 dismissing the 2nd defendant's application dated 16th January 2020 are vacated.
2. The 2nd defendant's application dated 16th January 2020 is hereby reinstated to hearing but only in respect to the first limb raising the issue of res – judicata.
3. The parties to appear on 29th October 2020 for further directions on that application.
4. MR BW'ONCHIRI to serve both MR ONYANDO for the plaintiff and MR KUNDU for the Interested Party.

Boaz N. Olao.

J U D G E

29th October 2020.