



**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**LAND AND ENVIRONMENT CASE NO. 291 OF 2013**

ALICE CHEPKEMOI NGEIYWO .....PLAINTIFF

VERSUS

LONGINUS NGANGA IFUMBI.....1<sup>st</sup> DEFENDANT

FREDRICK P. WEKESA BUKOMA ..... 2<sup>nd</sup> DEFENDANT

**RULING**

1. The applicant sued the two defendants in her plaint dated 25<sup>th</sup> October 2013. She also filed along with the plaint a notice of motion under certificate of urgency.. In the motion, she sought for an order from this court to compel the district land registrar and surveyor Bungoma to make a site visit to LAND PARCEL Nos E.BUKUSU/N.SANG'ALO/1921, E.BUKUSU/N.SANG'ALO/1922, and E.BUKUSU/N.SANG'ALO/1923 with a view of ascertaining individual acreages on paper and on the ground and to have any extra portions pertaining LAND PARCEL E. BUKUSU/N.SANG'ALO/1922, and 1923 sub-divided and transferred to her.

2. When the application came for interpartes hearing, Mr. Murunga advocate raised a point of law that this suit is *res judicata* and ought to be dismissed with costs. The summary of Mr. Murunga's objection is that the applicant had filed previously similar suits regarding the same subject matter which had been heard and determined or is pending. He annexed proceedings of Kanduyi Land Disputes Tribunal case no. 26 of 1998 and copies of notice of motion in Bungoma CMCC land case no. 25 of 2001 in support of his submissions.

3. He also annexed a copy of filed memorandum of appeal in Bungoma HC Civ. Appeal no. 27 of 2008. He submitted that in all the suits, the matter in dispute was similar to the present claim. That in executing the award of the tribunal, the District Land Surveyor did visit the three disputed parcels of land nos E.BUKUSU/N.SANG'ALO/1922, 1923 and 1921 and made a report. He annexed a copy of that report and submitted that the applicant has never filed an appeal against that report which was made available to her. Mr Murunga advocate has informed the court that the applicant is aware the 2nd defendant is deceased yet she has filed a claim against him. In response, the applicant admitted filing the dispute before the Kanduyi Land Disputes Tribunal in 1998 and the application in 2008 but denied she filed the pending appeal. She urged the court to grant her order for re-survey of the land.

4. I have perused the pleadings filed. In the plaint, the applicant has sought for an order compelling the District Land Registrar and Surveyor to visit E. BUKUSU/N. SANG'ALO/1921, 1922 and 1923 to ascertain individual acreages on the ground and to have any extra portions on L.R. 1922 and 1923 sub-divided and transferred to her (see paragraph 9 of the plaint). The tribunal in their award dated 20.2.2001 found thus

**“The panel examined the facts and resolved that the buyers bought from James Kibusia Ndiga properly and recommended that the claimant brings in special survey to resurvey the land so that any portion over the land bought should go back to the claimant. Thus Longino – 3 acres, Bukoma 3 ½ acres. Each party to bear their costs.**

5. In the notice of motion filed in 2008, prayer one therein sought similar orders as those granted by the Kanduyi Land Disputes Tribunal. This application was dismissed on 3<sup>rd</sup> June 2008 because the

trial court held the view the matter in dispute had already been determined. From the copy of the memo of appeal annexed, it is an appeal against this ruling of the Chief Magistrate's court. In the memo on record, the applicant is named as the appellant and the defendants as respondents. This appeal is still pending. It is quite obvious that either the applicant does not understand the legal process or has chosen to adopt the title of a vexations litigant. This suit is no doubt *res judicata* as the orders sought herein are similar to the award of Kanduyi Land Disputes Tribunal on 20.2.2001 and which orders have not been set aside or varied. The Kanduyi LDT reached its decision having heard all the parties to the dispute. Consequently, I find the application dated 9<sup>th</sup> April 2014 together with the plaint filed is *res judicata*. The entire suit be and is hereby ordered struck out as being *res judicata* and an abuse of the court process. The 1<sup>st</sup> defendant is awarded the cost of the application and the suit.

**DATED, SIGNED** and delivered in Bungoma on 10<sup>th</sup> of July 2014

**A. OMOLLO**

**JUDGE**