



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC JR. CASE NO. 9 OF 2017

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN LAND DISPUTES TRIBUNAL

KAKAMEGA MUNICIPALITY.....RESPONDENT

AND

ALFRED N. ANDATI)

ESTHER B.U. MUHONJA)

STANLEY M. LIJINGA)

ELIJAH'S FOUR SONS).....INTERESTED PARTIES

AMINA ABDI PERIZER)

JOHN OTIENDE MASIMBA)

EX PARTE APPLICANT:- JAMES SAKWA MUKOLWE

RULING

The first application is dated 29th November 2019 and is brought under order 45 rule 1 and 2 of the Civil procedure Rules seeking the following orders;

1. That the ruling of this honourable court made on the 14th day of December, 2017 be reviewed to include title number Butso/so/Shikoti/19817 instead of Butso/so/Shikoti/4464.
2. That upon such review the applicant's portion of land measuring 0.1 Ha be hived out of land parcel No. Butso/so/Shikoti/19817 and a title deed be issued forthwith.
3. Costs of this application be provided for.

It is supported by the annexed affidavit of Alfred N. Anditi and the following grounds that the court vide its judgment dated 12th June, 2019 found that the applicant is entitled to 0.1 Ha of land parcel No. Butso/so/Shikoti/4464. That vide the court's ruling delivered on 14th December, 2017, the Deputy Registrar of this court was authorized to sign all relevant transfer documents to facilitate the compliance with the court order. That before the implementation of the above court order, Land parcel No. Butso/so/Shikoti/4464 was sub-divided into 19817 and 19818. That the applicant's land now falls within land parcel No. Butso/so/Shikoti/19817 currently registered in the name of the Ex-parte applicant. That it will be in the interest of justice if the orders sought are granted.

The second application is dated 18th February 2020 and is brought under Sections 1A, 1B & 3A, 63 & 98 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. That the ruling of this honourable court made on the 14th December, 2017 be reviewed to include title number Butsotso/Shikoti/19817 created from the original title number Butsotso/Shikoti 4464.
2. That the 2nd applicant Esther B.U. Muhonja alias Rosemary Esther Ondisa Muhonja to get a portion of land measuring 0.16 hectares or thereabouts to be carved from Butsotso/Shikoti/19817 created from the original title number Butsotso/Shikoti/4464.
3. That the Deputy Registrar be empowered to enforce and or implement the earlier orders of this honourable court by executing all transfer forms and or any other relevant forms in place of the Ex-parte applicant James Sakwa Mukolwe.
4. That OCS Kakamega Police Station be ordered to provide adequate security during the survey exercise Butsotso/Shikoti/19817 created from the original title number Butsotso/Shikoti/4464.
5. That costs of this application be provided for.

It is based on the the affidavit of the 2nd interested party/applicant herein Esther B.U. Muhonja alias Rosemary Esther Ondisa Muhonja and grounds that the ruling made on 12th June 2014 by Hon Justice Said J. Chitebwe J was made in favour of the interested parties herein. That original title number Butsotso/Shikoti/4464 has now changed to create new title numbers Butsotso/Shikoti/19817 and 19818 respectively. That title number Butsotso/shikoti is registered in the name of the Ex-parte applicant James Sakwa Mukolwe. That the order made on 14th December, 2017 and 8th March, 2018 have not been fully implemented and or enforced to the detriment of the 2nd interested party/applicant who cannot enjoy the fruits of the judgment of this honourable court. That it is only in the interest of justice that orders sought be granted. That the Ex-parte applicant will not suffer any prejudice since eventually the orders made on 14th December, 2017 and 8th March, 2018 respectively will be implemented in favour of all the concerned parties herein.

This court has considered both applications and submissions therein. This court wishes to reiterate its finding in a similar application filed in this matter dated 26th October 2018 where the court found that a ruling made on 12th June 2014 by Hon. Justice Said J. Chitembwe – J was made in favour of the interested parties herein. That this honourable court made orders in favour of the 1st interested party Alfred N. Andati and 5th interested party Amina Abdi Perizer on 14th December, 2017. Similar orders on 8th March, 2018 in favour of the 2nd interested party applicant herein Esther B.U. Muhonja alias Rosemary Esther Ondisa Muhonja. However, that the 2nd interested party/applicant Esther B.U. Muhonja alias Rosemary Esther Ondisa Muhonja presented her documents for transfer pursuant to order made on 8th March, 2018 just to find out that the original title number Butsotso/Shikoti/4464 had been closed upon sub division and creating two Butsotso/Shikoti/19817 and 19818. That the order made on 14th December, 2017 and 8th March, 2018 have not been fully implemented and or enforced to the detriment of the 1st interested party and 2nd interested party/applicant. In that ruling the court held that;

The fact of the matter is that the original title number Butsotso/Shikoti/4464 does not exist. The application orders made on 8th March, 2018 are not enforceable as the suit land no longer exists. I find that this court cannot now go back and forth and repeat the orders issued was back in 2014 when the subject matter has substantially changed. The interested parties have been indolent and would need to present a fresh matter to enforce their rights if at all. The land now does not belong to the exparte applicant and if the 5th interested party obtained the same through fraudulent means then this must be pleaded and proved. I find this application has no merit and I dismiss it with cost.

I see no reason to review those rulings as I see no error or omission on the part of the court. I find that both applications dated 29th November 2019 and 18th February 2020 are not merited and I dismiss them with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE