



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC CASE NO. 26 OF 2014**

**MARGARET NANYAMA WANYAMA..... 1<sup>ST</sup> PLAINTIFF**

**KENNEDY W. WANYAMA..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**VINCENT WEKESA BARASA.....1<sup>ST</sup> DEFENDANT**

**MARGARET NASIMIYU.....2<sup>ND</sup> DEFENDANT**

**CHRISTINE WEKESA..... 3<sup>RD</sup> DEFENDANT**

**RULING**

On 20<sup>th</sup> February 2020, this Court declined to grant the plaintiff the orders sought in her oral application made on 3<sup>rd</sup> February 2020 seeking an order that she be allowed to excise a portion measuring 0.375 acres out of the land parcel **NO BUNGOMA/SOYSAMBU/124**. That decision was made on the ground that the said parcel of land no longer exists the same having been sub – divided to give rise to parcels **NO BUNGOMA/SOYSAMBU/1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885 and 1886**.

On 21<sup>st</sup> October 2020, the plaintiff appeared before me seeking an order that this Court allows her to excise a portion measuring 0.37 acres out of the land parcel **NO BUNGOMA/SOYSAMBU/1879**. However, the Certificate of Search dated 19<sup>th</sup> October 2020 which she availed at my request showed that it was in respect to the parcel **NO BUNGOMA/SOYSAMBU/1878** and not **1879**. I again declined her application.

She has now filed another undated application but filed on 26<sup>th</sup> October 2020 confirming that the 0.375 acres which she seeks is to be curved from parcel **NO BUNGOMA/SOYSAMBU/1879**. She has also annexed a Certificate of Search which shows that the parcel **NO BUNGOMA/SOYSAMBU/1879** indeed is registered in the names of **VINCENT WEKESA BARASA** the defendant herein. Though served, the defendant has never appeared and infact the Judgment of **MUKUNYA J** delivered in the plaintiff's favour on 7<sup>th</sup> July 2015 was ex – parte. It is clear from the plaintiff's supporting affidavit that she is infact in occupation and possession of a portion measuring 0.375 acres out of the original land parcel **NO BUNGOMA/SOYSAMBU/124** and which portion, as per her un – rebutted evidence, is parcel **NO BUNGOMA/SOYSAMBU/1879**. If this Court declines her application, which in any case is not opposed, the Judgment delivered by **MUKUNYA J** on 7<sup>th</sup> June 2015 will remain hollow. It is also clear from the record of 1<sup>st</sup> July 2019 that the Deputy Registrar authorized the County Surveyor and Registrar to curve out a portion measuring 0.375 acres to be awarded to the plaintiff. The defendant has not resisted that exercise and all that taken together with the fact that the said defendant did not defend this suit nor the application, and bearing in mind that Courts of law exist to serve substantive justice to the parties, I allow the plaintiff's application.

Ultimately therefore, this Court makes the following orders: -

- 1. The BUNGOMA LAND REGISTRAR to issue the plaintiff with a title deed for a portion measuring 0.375 acres out of the land parcel NO BUNGOMA/SOYSAMBU/1879.**
- 2. The defendant shall execute all the necessary documents to facilitate that transfer and surrender the title to land parcel NO BUNGOMA/ SOYSAMBU/1879 to facilitate that transfer within 15 days from today.**
- 3. In default of (2) above the Deputy Registrar shall execute all the necessary forms on behalf of the defendant and the BUNGOMA LAND REGISTRAR shall amend the register accordingly.**
- 4. No orders as to costs.**

**Boaz N. Olao.**

**J U D G E**

**4<sup>th</sup> November 2020.**

**Ruling dated, signed and delivered in Open Court this 4<sup>th</sup> day of November 2020.**

Plaintiff present

Defendant absent

**Boaz N. Olao.**

**J U D G E**

**4<sup>th</sup> November 2020.**

**Ruling dated, signed and delivered in Open Court this 4<sup>th</sup> day of November 2020 at BUNGOMA.**

Applicant present

**Boaz N. Olao.**

**J U D G E**

**4<sup>th</sup> November 2020.**