



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 253 OF 2017

JUMA WANGWERO OTEMBO PLAINTIFF/RESPONDENT

VERSUS

CALISTUS MUSIKO.....DEFENDANT/APPLICANT

AND

COUNTY LAND SURVEYOR- KAKAMEGA COUNTY..... INTERESTED PARTY

RULING

The application is dated 2nd November 2020 and is brought under Order 22, Rule 22 of the Civil Procedure Rules and Section 1A, 1B, 3A and 34 of the Civil Procedure Act 2010 seeking the following orders:-

1. That service of this application be dispensed with, the same be certified urgent and heard ex-parte in the 1st instance.
2. That pending the hearing of this application interparties there be an order of stay of execution of the decree herein.
3. That there be an order of stay of the execution of the decree herein.
4. That the County Land Surveyor be restrained from sub-dividing Land Parcel No. South Wanga/Lureko/2680 other than in the manner ordered by this court.
5. That any resultant sub-division done in any other manner other than as ordered by this court be nullified and a fresh one done.
6. That the sub-division of Land Parcel No. South Wanga/Lureko/2680 be carried out in accordance with the existing demarcations.
7. That the plaintiff be restrained from uprooting the existing demarcation features.
8. That costs of this application be provided for.

It is supported by the affidavit of Kalisto Misiko Lutome and grounds that the sub-division of Land Parcel No. South Wanga/Lureko/2680 was carried out based on the two acres claimed by the plaintiff and not as per the existing demarcations as ordered by the court. That the plaintiff has commenced and is in the process of uprooting the existing demarcations. That the sub-division of Land Parcel No. South Wanga/Lureko/2680 was not done in accordance with the judgment of this court. That failure to sub-divide Land Parcel No. South Wanga/Lureko/2680 in accordance with the judgment of this court has altered the said judgment and led to a miscarriage of justice. That it will be in the interest of justice if this application is allowed.

This court has considered the application and the submissions therein. The application was served and was not opposed. I have perused the judgement delivered in this court on the 26th June 2019 and where the court found that it cannot ascertain what size of land was purchased. Indeed the plaintiff's witnesses said they used their feet to determine the boundary and the land was never surveyed. It has not been disputed that the plaintiff and his family have occupied part of land parcel No. S. Wanga/Lureko/2680 which was created from L.R. No. S. Wanga/Lureko/390 the acreage cannot be established from the evidence adduced before it. Hence the court declared the plaintiff the owner of a portion out of land parcel No. S. Wanga/Lureko/2680 whose boundaries are to be determined by the County Land Surveyor and which he occupies and to which he is entitled by virtue of adverse possession. I find this application is merited and I grant prayer 4, 5 and 6 with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 9TH DECEMBER 2020.

N.A. MATHEKA

JUDGE