

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 506 OF 2017

MURIEMA SHIRANDULA SANYA.....PAINTIFF/RESPONDENT

VERSUS

VINCENT OSUNDWA.....DEFENDANT/APPLICANT

AND

HARUN MUESO SAGALA.....1ST INTERESTED PARTY

MANASE AGUMBA.....2ND INTERESTED PARTY

RULING

The application is dated 10th September 2020 and is brought under Article 50 of the Constitution of Kenya, 2010, Section 1A, 1B, 3, 3A of the Civil Procedure Rules seeking the following orders:

1. THAT this application be certified as urgent and is heard ex parte in the first instance.
2. THAT this honourable court be pleased to order, direct and or authorize the Land Registrar Kakamega Land Registry themselves, their servants or anyone authorized by them to enforce orders issued on 4th October 2017 nullifying registration of plot No. North Kabras/Matsakha/133 and reverting the same to North Kabras/Matsakha/2062, 2063 and 2064.
3. THAT this order be served upon the Land Registrar, Kakamega Land Registry themselves, their servants or anyone authorized by them for compliance.
4. THAT the costs of this application be in the cause.

It is based on the grounds that the honourable court pursuant to a ruling delivered on 4th October, 2017 issued orders allowing an application setting aside judgement delivered on 19th May, 2014 and all its consequential orders in favour of the defendant/applicant and as against the plaintiff/respondent. That the said orders issued on 4th October 2017 against the plaintiff/respondent have never been reviewed, varied or discharged. The orders were extracted on 15th day of July 2020 and signed by the Deputy Registrar, however, the Land Registrar, Kakamega Land Registry is unable to process the same on the principle basis that the subject matter known herein as North Kabras/Matsakha/133 is not addressed in the orders issued on the material day. That the applicant fears of an impending eviction and seeks to restrain the plaintiff/respondent who can at any time execute the judgement/decreed issued on 15th July 2020. That the plaintiff/respondent will not be prejudiced in any way if the orders read as prayed under paragraph 2 and 3 given the judgment was issued on 19th May, 2014. That the defendant/applicant stands to be gravely prejudiced and cannot be redressed by a suit for damages if the plaintiff/respondent should execute the decree/judgment issued on 19th May, 2014 given that the defendant/applicant has extensively developed the suit land and has resided therein for a long time and knows no other land parcels apart from the same. That it is only in the interest of justice that the orders being sought herein are granted.

The plaintiff/respondent that it is true that the honourable court pursuant to the ruling delivered on 4th October 2017 issued orders setting aside judgement delivered on 19th May 2014 and all consequential orders. That the honourable court was expressly clear in its ruling on how it intended this matter to proceed and which was that the suit should particularly proceed to a full hearing of both parties as required by the Civil Procedure Rules before judgment. That the judgment and orders of the honourable court dated 4th October 2017 were never issued for purposes of execution and or compliance by the Kakamega Land Registrar, but only to give the defendant/applicant an opportunity to be heard. That the extracted order of the honourable court dated July 15th 2020 does not in any way direct Kakamega Land Registrar to comply with anything over the suit land pending full hearing of this case. That the applicant's application is therefore misleading, dishonest and brought in bad faith ostensibly to render the full hearing of this case nugatory. That applicant does not reside on the suit land and hence there is no point of evicting him. That he raised a preliminary point of law at the hearing hereof that the applicant's application is bad in law and form, vexatious and an abuse of the court process and the same should be struck out with costs. That the defendant/applicant has omitted in his application currently before the court the 3rd Interested Party, John Barasa Kausi who was enjoined in this suit by the honourable court.

This court has considered the application, preliminary objection and submissions therein. The plaintiff raised a preliminary objection that the defendant/applicant has omitted in his application currently before the court the 3rd Interested Party, John Barasa Kausi who was enjoined in this suit by the honourable court. I find that this is the discretion of the applicant and to his detriment should the court find that the orders would affect the said 3rd Interested Party, John Barasa Kausi as the same will in the long run not be enforceable. I find the preliminary objection is not merited and I overrule the same. On the application pursuant to a ruling delivered on 4th October, 2017 issued orders

allowing an application setting aside judgement delivered on 19th May, 2014 and all its consequential orders in favour of the defendant/applicant and as against the plaintiff/respondent hence the application. I find that this application is premature and should await the final determination of this case and there is no value at this point to order, direct and or authorize the Land Registrar Kakamega Land Registry themselves, their servants or anyone authorized by them to nullify registration of plot No. North Kabras/Matsakha/133 and reverting the same to North Kabras/Matsakha/2062, 2063 and 2064. I order that the status quo be maintained pending the hearing and determination of this case. Parties are advised to take an early hearing date as this is an old matter. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 8TH DECEMBER 2020.

N.A. MATHEKA

JUDGE