



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 109 OF 2000(OS)

JAMES MAYEKU MAKITONI.....1ST PLAINTIFF

PAUL NAKHISA MAKITONI.....2ND PLAINTIFF

FRANCIS SIMIYU MAKITONI.....3RD PLAINTIFF

VERSUS

TERESINA N. MASEBE.....1ST DEFENDANT

TOM MACHABE.....2ND DEFENDANT

WENSLAUS MUKHWANA.....3RD DEFENDANT

CHRISPINUS WEKESA.....4TH DEFENDANT

URBANUS MASAFU WEKESA.....5TH DEFENDANT

AND

LUTUKAYI JOSEPH MASINDE (suing as administrator of the Estate of the late

MICHAEL WATAMBA).....APPLICANT

RULING

1. The application dated 25th September, 2018 seeks for orders that:

(1) Pending the hearing and determination of this application inter-partes, there be an order restricting transactions on all that parcels of land known as East Bukusu/North Nalondo/4932, East Bukusu/North Nalondo/4933, East Bukusu/North Nalondo/4934 and East Bukusu/North Nalondo/4939.

(b) This honourable court be pleased to review, vary and/or set aside its orders of 14th August, 2013 cancelling the deceased title East Bukusu/North Nalondo/2550, or in the alternative

(c) This honourable court be pleased to review and/or vary its orders of 14th August, 2013 cancelling the deceased title East Bukusu/North Nalondo/2550 by making a provision for 4 acres to be hived out of the parent title - East Bukusu/North Nalondo/1658 and order the same be transferred to the applicant as administrator of the estate of the deceased Michael Watamba

(d) Costs of this application be provided for.

2. The supporting affidavit sworn by the plaintiff of 25/9/2018 and filed with the application and the foot of the application set out the grounds upon which the application is made.

3. The applicant relies on the following grounds:- that this court cancelled the title to **East Bukusu /North Nalondo/2250** without according

the applicant a hearing; that the order cancelling the title did not provide for **4 acres** of the parent title **East Bukusu /North Nalondo/1658** to be vested in the applicant's name; that the excision of the land parcel **East Bukusu/ North Nalondo/ 2250** was not calculated to defeat the decree of this court, that this court has the mandate to make provision for 4 acres in favour of the applicant from the parent title **East Bukusu /North Nalondo/1658**, and that the plaintiffs have already had the parent parcel no **East Bukusu /North Nalondo/1658** subdivided and they may dispose of the same at any time now.

4. The respondent/defendant filed replying affidavit sworn on **16/10/2018**. He deponed that there are no reasons warranting a review; that the order cancelling the original title are merited; that the applicant's position on the ground has not been affected; that his parcel number is now **East Bukusu /North Nalondo/4939** measuring 1.60 ha (approximately 3.9 acres) and that the applicant is at liberty to collect his title from the lands registry.

5. The applicant filed his submissions on **19/11/2018** and the plaintiffs on **20/11/2018**.

6. I have observed that there is no response to the averments by the plaintiffs that that the applicant's position on the ground has not been affected and that his parcel number is now **East Bukusu /North Nalondo/4939** measuring **1.60 Ha** (approximately **4** acres) and that the applicant is at liberty to collect his title from the lands registry. Such rebuttal would have set this court on an investigatory expedition to ascertain whether the applicant has been rendered landless after the cancellation of the subdivision conducted on the mother title that is parcel no **East Bukusu /North Nalondo/1658**.

7. I therefore find that the applicant still has land, that the land is demarcated on the ground, and that a title is expected to be issued in his name if he approaches the land registry. There can be nothing else that the applicant is seeking save the land that the plaintiffs have declared that they have not interfered with on the ground which is the equivalent of what the applicant is seeking herein.

8. On the basis of the foregoing, I allow the motion dated **25th September, 2018** only to the extent that parcel number **East Bukusu /North Nalondo/4939** shall vest in the estate of the late Michael Watamba. That, I believe, will lay to rest this long standing matter and free the parties time for other life pursuits.

9. Each party shall bear their own costs of the motion.

Dated, signed and delivered at Kitale on this 6th day of February, 2019.

MWANGI NJOROGE

JUDGE

6/02/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Arunga for plaintiff/respondent

Mr. Wanyonyi P.G. for defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

6/02/2019