



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 44 OF 2018

NADUTARI KORIATA.....PLAINTIFF/APPLICANT

VERSUS

NAREIYO KORIATA.....1ST DEFENDANT/RESPONDENT

NDOVU ESTATE LTD.....2ND DEFENDANT/RESPONDENT

NAROK DISTRICT REGISTRAR.....3RD DEFENDANT/RESPONDENT

NAROK DISTRICT SURVEYOR.....4TH DEFENDANT/RESPONDENT

PROVINCIAL SURVEYOR, RIFT VALLEY.....5TH DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated 8th July, 2019 the 1st Defendant/Applicant sought for orders of the court's Ruling dated 26th June, 2019 and a Review of the aforesaid order restraining the 1st Defendant from leasing her own land and substituting the same with an order that she be at liberty to lease her land and not dispose it and the cost of the Application. The Application was based on the grounds that the Plaintiff is the co-wife of the 1st Respondent and while the court ordered that parties do maintain status quo it also restrained the 1st Defendant/Applicant not to lease out the land when the disputed portion remains the property of the 1st Defendant which portion is under lease till 2020. The Application is further based on the grounds that the 1st Defendant had entered into leases with 3rd parties before the substantive suit was filed. Lastly the Applicant contends that if the ruling that had errors of facts is not reviewed then it will create disturbances among the parties who are co-wives.

The Application was supported by the Affidavit of the 1st Defendant/Applicant in which she averred that she is the registered owner of land parcel NAROK.CIS MARA/OLOLULUNGA/483 and that the ruling of the court delivered on 26th June, 2019 had ordered that she be restrained from leasing her own parcel of land and further that the said land is currently under crop and is due to be harvested which is leased to a party and in view of the above she prays that the court do review its order made on 26th June, 2018.

The Application was opposed by the Plaintiff/Respondent who by way of a Replying Affidavit averred that the disputed portion was forcefully taken from him by the 1st Defendant. However, he accepts that the Applicant be allowed to harvest the current crop but be stopped from leasing the land any further. She further contends that the orders of the court were equitable and therefore the same shouldn't be set aside.

The 2nd Respondent had also filed a supplementary affidavit confirming that he had leased the suit land from the 1st Defendant since 2011 and he has crops on the suit land currently.

I have read the Application before me and the submissions filed by the parties. It is now established under what circumstances a party may apply for review of an order of a court as contained under order 45 of the Civil Procedures. This are errors apparent on the face of the record, when the said application was not made without undue delay.

In the instant application I must first determine whether the Application was made without undue delay. The court had delivered its ruling in respect of which the Application is based on 26th June, 2019 and the instant Application was made on the 8th July, 2019 and in the circumstances I find that the Application was made without any undue delay.

On whether there is an error apparent on the face of the court, the Applicant has pointed out several issues. Firstly, that the Applicant's Land Parcel is Narok/Cis Mara/Ololulunga/484 and not Land Parcel No. 483 as stated in the ruling and secondly, the suit land is situated on a feeder road off the Narok/Bomet Road and not on the Narok/ Bomet road. I had read the ruling and the pleadings filed together with the instant Application and I find that indeed there are errors which are apparent on the face of the record in which also the Respondent in opposing the instant Application was not contested and in view of the above I find that the Ruling delivered contained various factual errors and not any legal errors.

The Applicant has in her Application contend that she is the registered owner of the land parcel No. 484 and even though she has no problem she states that restraining her from leasing her land is highly prejudicial. The Respondent though not disputing the land is registered in the name of the Applicant contends that the land was forcefully taken from him a fact which can only be addressed at a full hearing.

Having considered the Application before me and the submissions filed by the parties I find that the instant Application is one which is worthy of the exercise of my discretion and in the circumstances I accordingly vary and review my orders of 22nd June, 2019 in the following terms:-

1. THAT The Plaintiff is the registered owner of the suit parcel No. NAROK/CIS MARA/OLOLULUNGA/484 while the 1st Respondent is the owner of NAROK/CIS MARA/OLOLULUNGA/483.
2. THAT the suit land is situated on a feeder road off the Narok/Bomet Road.
3. THAT The Respondent be at liberty to lease her land and not dispose it.
4. THAT The order of status quo as obtaining at the filing of the instant suit be maintained pending the hearing and determination of the suit.
5. Since the Plaintiff and the 1st Defendant are co-wives each party to bear its own costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 20th day of September, 2019

Mohammed Kullo

Judge

20/9/19

In the presence of: -

Mr Kinyanjui for the Respondent

Mr Otieno for the Applicants

Mohammed Kullo

Judge

20/9/19