



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 181 OF 2015**

**SAMMY LIKUYUI ADIEMA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**CHARLES SHIMWATI SISKANI....1<sup>ST</sup> DEFENDANT/APPLICANT**

**JOSEPHINE CHEMUTAI**

**KAKAMEGA DISTRICT SURVEYOR.....2<sup>ND</sup> DEFENDANT**

**RULING**

This application is dated 18<sup>th</sup> August 2015 and is brought under section 68 and 69 of the Land Registration Act No, 3 of 2012 seeking the following orders;

1. That an order of inhibition do issue inhibiting subdivision, demarcation, registration and or any other dealings in respect to LAND PARCEL NO. S KABRAS/SHAMBERERE/3854, S. KABRAS/SHAMBERERE/3855 and S. KABRAS/SHAMBERERE/3856 being subdivisions of LAND PARCEL NO. S KABRAS/SHAMBERERE/2650 pending hearing and final determination of this suit.
2. That an order of inhibition do issue inhibiting subdivision, demarcation, registration and or any other dealings in respect to LAND PARCEL NO. S. KABRAS/ SHAMBERERE/ 3881, S. KABRAS/SHAMBERERE/3882, S. KABRAS/ SHAMBERERE/ 3883 and S. KABRAS/ SHAMBERERE/ 3854 pending hearing and final determination of this suit.
3. That the costs of this application be provided for.

The 1<sup>st</sup> defendant/applicant submits that the subject of this suit is LAND PARCEL NO. S. KABRAS/SHAMBERERE/2650 which judgment was pronounced in favour of the 1<sup>st</sup> defendant. The plaintiff being dissatisfied filed an appeal being KISUMU CIVIL APPEAL NO. 3 OF 2014 which pronounced its judgment partly in favour of the plaintiff and partly in favour of the defendant court order is on the 1<sup>st</sup> defendant's list of documents No. (2)

The 1<sup>st</sup> defendant submits that during the pendency of the Appeal aforesaid, the plaintiff subdivided the suit land and the subject title was closed on subdivision (search certificate annexed on the 1<sup>st</sup> defendant's affidavit as "CSS 1")

The 1<sup>st</sup> defendant submits that the plaintiff is out to frustrate the 1<sup>st</sup> defendant by subdividing the suit land during the pendency of the appeal and the orders sought in the application dated 18<sup>th</sup> August, 2015 are deserving to preserve the suit land from further subdivisions. The 1<sup>st</sup> defendant further states that the plaintiff has brought this suit on a closed title calling for cancellation of the aforesaid titles as prayed in the counter claim. If the orders sought are not granted, the plaintiff is likely to continue sub dividing the suit land to the detriment of the 1<sup>st</sup> defendant. They urge the court to allow the 1<sup>st</sup> defendant's application dated 18<sup>th</sup> August 2015 with costs.

The plaintiff/respondent submitted that, being the duly registered owner of original parcel of land No. S. Kabras/Shamberere/2650 having lawfully sub-divided that parcel of land into 3 new numbers after obtaining all necessary consents and satisfying the Registrar of Lands that the sub-divisions were complying with the law. That the 3 new titles were properly curved out of the original title No. S. Kabras/Shamberere/2650 without any infringement and are traceable to that title by the search certificate dated 29<sup>th</sup> June, 2015. That he once more lawfully sub-divided parcel No. S. KABRAS/SHAMBERERE/3854 creating 4 (four) new titles, and endeavoured to comply with the Court of Appeal judgment in Kisumu Civil Appeal No. 3of 2014 by allocating 2 acres in plot reference S. KABRAS/SHAMBERERE 3882

to the 1<sup>st</sup> defendant as ordered by the court. That in doing so he ensured that 1<sup>st</sup> defendant homestead and residence or roads of access were not disturbed at all. That the 1<sup>st</sup> defendant has been told to proceed and register his parcel in his names and plaintiff does not understand why 1<sup>st</sup> defendant has failed to do. That he attach search certificate marked “SKA 1 (a), (b) and (c)” and extract of the latest land map marked “SKA 2” in support of his averments.

This court has carefully considered both the applicant’s and the plaintiff’s submission. The application is based on the sworn affidavit of CHARLES SHIMWATI SHISIKANI and on the following grounds; that this suit is based on the judgment of KAKAMEGA HCCC NO. 50 OF 2008 and KISUMU COURT OF APPEAL CIVIL APPEAL NO. 3 OF 2014 in relation to LAND PARCEL NO. S. ABRAS/SHAMBERERE/2650 which land has since been subdivided by the plaintiff and there is an eminent danger of sale and transfer of the subdivided portions to third parties which action is likely to create complication to this suit and delay hearing of this suit.

Plaintiff/respondent on the other hand submitted that, being the duly registered owner of original parcel of land No. S. Kabras/Shamberere/2650 having lawfully sub-divided that parcel of land into 3 new numbers after obtaining all necessary consents and satisfying the Registrar of Lands that the sub-divisions were complying with the law. That the 3 new titles were properly curved out of the original title No. S. Kabras/Shamberere/2650 without any infringement and are traceable to that title by the search certificate dated 29<sup>th</sup> June, 2015. That he once more lawfully sub-divided parcel No. S. KABRAS/SHAMBERERE/3854 creating 4 (four) new titles, and endeavoured to comply with the Court of Appeal judgment in Kisumu Civil Appeal No. 3of 2014 by allocating 2 acres in plot reference S. KABRAS/SHAMBERERE 3882 to the 1<sup>st</sup> defendant as ordered by the court.

I find that the right court to interpret the orders issued on the said land would be the court of appeal which made the orders in the first place namely in KISUMU COURT OF APPEAL CIVIL APPEAL NO. 3 OF 2014 in relation to LAND PARCEL NO. S. ABRAS/SHAMBERERE/2650. It is not in my place to comment of the execution of the orders therein. I find this application is misplaced and hence not merited. I dismiss it with costs to the respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 6<sup>TH</sup> DAY OF MARCH 2018.**

**N.A. MATHEKA**

**JUDGE**