

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 257 OF 2017

SULEIMAN AMUKOYA.....PLAINTIFF/APPLICANT

VERSUS

SHABAN TABU SHIKHAYA.....DEFENDANT/RESPONDENT

RULING

The application is dated 22nd day of October 2014 seeking the following orders:-

1. That the District Land Registrar be ordered to cancel, nullify, deregister and or revoke the sub-division of the registered L.P. NO. S/WANGA/EKERO/4352; 4353 and revert the same to original L.R. NO. S/WANGA/EKERO/2491.

2. That costs be provided for.

The applicant submitted that, he is claiming 1 acre of land from the L.R. NO. S/WANGA/EKERO/2491, which he occupies. That on or about 18th September, 2014, judgment was delivered and it was ordered that the suit land plot NO. S/WANGA/EKERO/2491 be sub-divided and a portion measuring one acre to be transferred to the defendant/applicant herein SHABAN TAABU SHIKHAYA. THAT on or about 22nd September, 2014, he was issued with a decree pursuant to the judgment that was delivered. (Annexed is a copy of the decree marked S.T.J.1). That he visited the lands office Kakamega and discovered that the plaintiff/respondent had illegally fraudulently and contesting sub-divided the L.P. NO. S/WANGA/EKERO/2491 into L.R. NO. S/WANGA/EKERO/4351, 4349, 4355, 4350, 4352, and 4353 and registered into other people's names without his consent and or knowledge. That he is unable to execute the decree herein at the lands office due to the sub-divisions carried on the L.P. NO. S/WANGA/EKERO/2491. That he now wishes that the District Land Registrar be ordered to revoke, nullify, cancel and or deregister the sub-divisions of the registered L.P. NO. S/WANGA/EKERO/4351, 4359, 4355, 4350, 4352, 4353 and revert the same to original L.R. NO. S/WANGA/EKERO/2491. That he is now requesting the Court for an order that the District Land Registrar be ordered to cancel, nullify, revoke and or deregister the sub-divisions of the registered L.R. NOS. S/WANGA/EKERO/2491.

The respondent submitted that the land had been subdivided and sold to third parties and he is not capable of giving the applicant the one acre as ordered by the court and he intended to appeal against this judgement. The third parties have sued him in another case touching on ownership and subdivision of that land.

This court has carefully considered the application and the submissions therein. It is not disputed that the judgement of the court was in favour of the applicant in this matter. The respondent never appealed. He went ahead during the case and sold the land to third parties after subdivision and is not being sued in Kakamega ELC no 2 of 2015. Court orders must not be in vain. I find that the suit parcel of land has been subdivided and transferred to third parties. The applicant now needs to pursue the said third parties and this court cannot issue orders against individuals not party to this case. I find this application has no merit and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 10TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE