



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. MISC.CASE NO. 120 OF 2017 (FORMELY HCC MISC. 178 OF 2011)

MARY VERONICA HALWENGE APPLICANT

VERSUS

KISUMU EAST LAND DISPUTE TRIBUNAL DEFENDANT

AND

BENTA AUMA KOYO INTERESTED PARTY

RULING

1. Mary Veronicah Halwenge, the Applicant, filed the notice of motion dated 19th December 2017 seeking for the caution registered against Kisumu/Konya/2919 on 27th January 2010 to be discharged and eviction order be issued. The application is based on the four grounds on the notice of motion and supported by the affidavit of the Applicant sworn on the 19th December 2017.

2. The application is opposed by Benta Auma Koyo, the Respondent, through her replying affidavit sworn on the 12th April 2018.

3. The application came up for hearing on the 16th April 2018 when Mr. Mweisigwa and Ochieng, the learned counsel for the Applicant and Respondent respectively, made their oral submissions.

4. The following are the issues for determinations:

a) Whether the court's judgment of 14th September 2016 on the judicial review application dated 8th August 2011 amounted to a determination on the parties title to use and ownership of land parcel Kisumu/Konya/2919.

b) Whether the Applicant's prayers for lifting of the caution and eviction of the Respondent are properly before the court.

c) Which party pays the costs of the application.

5. The court has carefully considered the grounds on the application, the affidavit evidence by both parties, the oral submissions by counsel, the record and come to the following findings;

a) This proceedings was commenced through the notice of motion dated 14th July 2011 seeking for leave under Order 53 Rule 1 of Civil Procedure Rules, to apply for an order of certiorari to quash the Kisumu East District Land Dispute Tribunal decision in Case no. 1 of 2010, which had awarded Kisumu/Konya/2919 to the Respondent.

b) The leave was granted on 4th August 2011 and the notice of motion dated 8th August 2011 for the order of certiorari filed. The application was granted with costs through the court's judgment of 14th September 2016.

c) That the straight forward effect of the judgment of 14th September 2016 was to return the parties relationship to the suit land to the position they were before the tribunal award. The judgment also awarded costs to the Applicant and that is the only element of the judgment that can be executed in this proceedings. That as for the issue of lifting the caution and eviction from the suit land, those were not matters litigated about in the proceedings and the court did not pronounce itself on them in the said judgment. That the parties may either seek an out of court legal settlement including moving the Land Registrar on those issues or formally move the court in a separate proceedings for determination.

6. That in view of the foregoing, the Applicant's notice of motion dated 19th December 2017 has no merit and is dismissed with costs to the

Respondent.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 26th DAY OF September 2018

In the presence of:

Applicant Absent

Respondent Absent

Interested Party Absent

Counsel M/s Akinyi for Exparte Applicant.

Mr. Ochieng for interested party

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE