

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC APPEAL NO. 75 OF 2017

ESTHER OMULALU OLUCHINJI..... APPLICANT

VERSUS

JEREMIAH OLUCHINJI

MATHEWS OLUCHINJIRESPONDENTS

RULING

The application is dated 4th May 2015 and seeks the following orders;

1. That this honourable court be pleased to direct the Deputy Registrar of this court to execute all relevant instruments necessary to effect the transfer of L.R. No. Butso/so/shikoti/1422 measuring 3.6 ha awarded to the applicant vide the judgment herein.
2. That the cost of this application be provided for.

WHICH APPLICATION is based on the annexed affidavit of Elizabeth Okutoyi Makuba and upon the following general grounds that the judgment was passed in favour of the applicant awarding her L.R. No. Butso/so/Shikoti/1422. That the respondent herein fraudulently registered himself in the said land. That the respondent has restrained the applicant from using the said land which her late mother was using and contracted to Mumias Sugar Company. That the judgment issued herein will not be enforced unless the Deputy Registrar of this honourable court is directed to execute the necessary transfer instruments in favour of the applicant.

The respondent submitted that, the land parcel number N. Butso/so/shikoti/1422 was not a subject of litigation in both Kakamega CMCC No. 764 of 1999, it was not a subject of Kakamega HCCA 4 of 2004. That as far as they have never litigated on Butso/so/Shikoti/1422 and he is not the registered proprietor of the land. Annexed hereto and marked AM1 is a copy of the search certificate. That judgment in appeal No. 4 of 2004 never gave land to the applicant herein, the applicant has read more to the order than was actually granted. That the tribunal case No. 36 of 1999 never adjudicated on land parcel number BUTSOTSO/SHIKOTI/1422. That the tribunal did not give land parcel No. Butso/so/Shikoti/1422 to the applicant or her mother. That the orders sought by the applicant are done on behalf of the estate of her late mother. She doesn't have power to pursue the orders as she is not the administratrix of the estate of her mother. That the proceedings in the tribunal were held by the High Court to have been done without jurisdiction and were declared a nullity.

This court has considered the application and the submissions therein. I have perused the court file. I find that, the land parcel number N. Butso/so/Shikoti/1422 was not a subject of litigation in both Kakamega CMCC No. 764 of 1999, it was not a subject of Kakamega HCCA 4 of 2004. The judgement in Kakamega HCCA 4 of 2004 never awarded the plaintiff the land but ordered that the appellant pursues succession proceedings. Secondly, the orders sought by the applicant are done on behalf of the estate of her late mother. She does not have power to pursue the orders as she is not the administratrix of the estate of her mother. She does not have any locus. I find that this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF SEPTEMBER 2018.

N.A. MATHEKA

JUDGE