

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 568 OF 2017

SAMWEL KAMSINGI OCHORA.....PLAINTIFF

-VERSUS-

MUSYOKA MASILU.....DEFENDANT

RULING

The Application before me is the Defendant's/Applicant's Notice of Motion dated 15th December, 2017 seeking for the court to vary, discharge and or set aside its orders of 16th November, 2017 which Application is brought under order 40 Rule 4 of CPR. The Application is based on the grounds that the Applicant is the legal allottee of the suit property and that the orders will prejudice the Applicant over the occupation and use of the suit land LR Kilgoris/Majengo/63.

The Application was supported by the Affidavit of the Applicant who deponed that he has done extensive developments on the property and that he had filed his replying affidavit to the application in which he had annexed photographs of the developments.

The Application was opposed by the Respondent who had filed a replying affidavit where he states that the Applicant despite service of the Application dated 18th October, 2017 failed and or ignored to respond to the same and that he failed to appear in court for the hearing of the Application. He further averred that the documents annexed to the replying affidavit are not authentic and the Applicant does not show the threshold for setting aside.

I have read the application before me and the submissions made by counsel and the reasons for variation, setting aside of the orders made include the emergence of material evidence that was with the knowledge among others.

In the instant case when the matter was fixed for hearing the Applicant was not present in court and despite the court satisfying itself that there was proper service on the Respondent/Applicant the court allowed the Application as prayed. The Applicant mounted the instant Application with a view to set aside those orders and having read the Application I find that the Applicant has not demonstrated any new material evidence to vacate and vary those orders. In any event the issue of who is the legal owner of the suit property is one that will be determined at a full hearing where the parties will have the opportunity to place all material relevant to the matter before the court.

The upshot of the above is that the application dated 15th December, 2017 lacks merit and I dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 23rd day of October, 2018

Mohammed Noor Kullow

Judge

23/10/18

In the presence of:-

Mr Abobo for the applicant/defendant

N/A for the Respondent

CA:Chuma

In the presence of:-