

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 519 OF 2014

SILVENUS OMINDE.....PLAINTIFF/RESPONDENT

VERSUS

NEREA ANDAYI

ALESTRICK PAUL NANZAI.....DEFENDANTS/APPLICANTS

RULING

The application by the defendants is dated 18th August 2018 and seeks the following orders:-

1. That this Court be pleased to substitute the names registered on those new numbers as follows:-Butsotso/Bukura/1081, 1082, 1278, 1279 all those numbers to be revoked and replace the old number Butsotso/Bukura/104 to enable the family to subdivide the same equally.
2. That the said land has a family dispute for over 20 (twenty) years attached herein is a copy of green card dated 24th April, 2007 and counter claim filed in November, 2013.
3. That even the same case was in court on 26th day of June, 2018, the case was dismissed with costs.
4. That we be issued with new grant in two names and new certificate of confirmation of the same on land parcel number Butsotso/Bukura/104 equal shares.
5. That costs be in the cause

The respondent submitted that he had filed the suit herein for eviction against the applicant herein and his mother the 2nd defendant for eviction. That on 26th June, 2018, this honourable court dismissed the suit i.e. Kakamega ELC Case No. 519 of 2014 with costs. That by dismissing the suit herein this honourable court became functus officio. That the applicants cannot purport to introduce a new subject matter which is the issue of adjudication in an already determined matter. That he is dissatisfied with this honourable court's judgment and so he filled a Notice of Appeal with the intention of filling an appeal (Annexed and marked as SO1 is a copy of Notice of Appeal dated 2nd July, 2018).

That if the orders sought are granted the appeal will be rendered nugatory and stand to suffer irreparable loss and damage which cannot be compensated by way of damages. That the annexed green card/copy of register clearly shows that appellant's father one Paul Malika Induswe as the registered proprietor and the said Paul Malika Induswe is not a party to this suit neither is he a father nor husband to the said 1st and 2nd respondents respectively. That he is the registered proprietor of Land parcel No. BUTSOTSO/BUKURA/1279 and the applicant seeks the cancellation of Land parcel Nos. BUTSOTSO/BUKURA/1081, 1082 and 1278 which are registered in other person's names and those persons are not parties to this suit hence they shall be condemned unheard. (Annexed and marked as SO3 (a-c) are copies of certificates of official search dated. That he was given land parcel NO. BUTSOTSO/BUKURA/1279 as a gift from his father Paul Malika Induswe who is alive and not a party to this suit and hence under section 24 of Land Registration Act 2012 the rights of the applicant which he seems to claim based on trust cannot come under section 25 (a) of the Land Cat 2012.

This court has considered the application and the submissions herein. I have perused the court file and find that, on 26th June, 2018, this honourable court dismissed the suit i.e. Kakamega ELC Case No. 519 of 2014 with costs after hearing the same. The defendants did not have any counterclaim. By dismissing the suit herein this honourable court became functus officio. The court cannot now grant the prayers sought for in this application. I find 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 16TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE