

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC JR CASE NO. 219 OF 2016

PARESH NARANDASH SEDANI.....PLAINTIFF

VERSUS

THE LAND REGISTRAR, VIHIGA

THE RESIDENT MAGISTRATE, VIHIGA.....RESPONDENTS

SAMSON ANGOLO TIMOTHY OSIRU.....1ST INTERESTED PARTY

CHARLES SIGU OTIENO.....2ND INTERESTED PARTY

RULING

The 1st interested party opposed the 2nd interested party's Notice of Motion dated 24th July, 2018 on the grounds inter alia that the court is functus officio. That the court considered the parties submissions and found no basis for making orders relating to Land Reference WEST BUNYORE/EBUSIKHALE/2209. The application made does not fall within the purview of section 99 of the Civil Procedure Act (2010). The judgment delivered on 11th July, 2018 can only be the subject of an appeal.

That the 2nd interested party submitted that he will be prejudiced in that he will have to wait until the intended appeal is finalized and yet this application was earlier in time. There is no draft memorandum of appeal annexed to the 1st interested party's application for the court to be able to determine the possibilities of success of the said appeal. That the suit land being ancestral as alleged by the applicant, does not remove or preclude it from the operation of the law governing judicial review. The application made does not fall within the purview of section 99 of the Civil Procedure Act (2010) and that there is an error on the face of the record as the applicant had been enjoined as an interested party and has adopted the submissions of the applicant in the judicial review application. There was an omission in the judgement and hence the court is not functus officio.

This court has considered the preliminary objection and the submissions therein. It is on record that the applicant was enjoined as the 2nd interested party on the 15th May 2018. I find that the preliminary objection has no merit and is overruled.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE