

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 317 OF 2017

STANLEY KIMANYANO KIKUYU.....PLAINTIFF/APPLICANT

VERSUS

ZIBEON MAKONGE.....DEFENDANT/RESPONDENT

RULING

This application is dated 6th September 2017 and seeks the following orders;

1. THAT the respondent herein be ordered to surrender Title Deed in respect of L.R. NO. S/MARAGOLI/LUGOVO/166 to enable him obtain title deed for himself.

2. THAT costs be provided for.

The applicant submitted that, on or about the year 28th October, 2005 he entered into a land sale agreement with the respondent herein for sale of a portion of land measuring 0.03 Ha from the L.P. NO. S/MARAGOLI/LUGOVO/166 at an agreed purchase price of Ksh. 160,000/= (Annexed is a copy of the land sale agreement marked SKK 1). That immediately they started to execute land transfer documents whereby the defendant signed the Land Control Board forms and they had a sitting at the Land Board which went through. The mutation form was drawn by the Land Surveyor whereby his portion measuring 0.03 Ha was given a new number which is L.R. NO. S/MARAGOLI/LUGOVO/1803 and the remaining portion of 1.28 Ha which is L.R. NO. S/MARAGOLI/LUGOVO/1802 was left with the respondent/defendant. (Annexed is a copy of mutation form marked SKK 2). The respondent was required to surrender the old title deed at the Lands Office Mbale in order to obtain the new numbers but the he has refused to surrender the same. The respondent/defendant became adamant and refused to transfer a portion of the L.R. NO. S/MARAGOLI/LUGOVO/1803 measuring 0.03 Ha to him. The applicant/plaintiff filed a case at Hamisi Senior Principal Magistrate 's Court Civil Suit No. 93 of 2008 which has been pending till 18th May, 2017 when he was advised to bring this matter to the High Court of Kenya at Kakamega since the lower has no jurisdiction to determine this matter. (Annexed is a copy of court proceedings marked SKK 3). The respondent/defendant is claims he never appeared at Hamisi Senior principal Magistrate's Court.

This court has considered the applicant/plaintiff's submissions. The respondent/defendant was served but failed to attend court or file any grounds of opposition. In this application the applicant is claiming a portion measuring 0.03 Ha of land from the L.R. NO. S/MARAGOLI/LUGOVO/166 which has since been sub-divided into two portions. He is asking the Court for an order of declaration that he is the bonafide beneficiary of a portion of land measuring 0.03 Ha from the L.P. NO. S/MARAGOLI/LUGOVO/1803. I find that these are the final orders requested for in the plaint and cannot be granted at this stage. The applicant has not established his case on a balance of probabilities and no oral evidence has been adduced. 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 14TH DAY OF NOVEMBER 2017.

N.A. MATHEKA

JUDGE