



**Natala v Luseneka (Environment & Land Case 523 of 2014)  
[2024] KEELC 658 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 523 OF 2014  
DO OHUNGO, J  
FEBRUARY 15, 2024**

**BETWEEN**

**NGOME NATALA ..... PLAINTIFF**

**AND**

**GEOFFREY L LUSENEKA ..... DEFENDANT**

**RULING**

1. The parties herein recorded a consent on 26<sup>th</sup> May 2020, pursuant to which this matter was marked settled. The consent was in the following terms:
  1. The defendant herein do transfer his share of 2 and 3/4 acres comprised in land parcel Kakamega/Malava/1097 as per the certificate of confirmation of grant dated 28<sup>th</sup> December, 2009 in Kakamega Succession Cause No. 351/2008.
  2. The plaintiff be at liberty to take possession of the aforesaid portion forthwith.
  3. The application dated 1<sup>st</sup> July, 2019 be deemed settled on the above terms.
2. An extracted order in respect of the above consent was issued by the Deputy Registrar 2<sup>nd</sup> July 2021. Subsequently, the plaintiff filed an application dated 19<sup>th</sup> September 2022. The parties compromised the application by recording yet another consent on 30<sup>th</sup> January 2023 as follows:
  1. That the County Surveyor/Surveyor to curve out, ascertain and fix boundaries of 2¾ Acres out of land parcel no. Kakamega/Malava/1097 in compliance with the Orders issued on the 2<sup>nd</sup> July, 2022 pending the registration and transfer process of the said portion to the Applicant.
  2. That the OCS Kabras Police Station be directed to provide security to the County Surveyor while carrying out the survey for purposes of carving out 2¾ Acres out of land parcel no. Kakamega/Malava/1097 and fixing the boundaries thereon pending the registration and transfer process of the said portion to the Applicant.



3. About four months later, the defendant changed advocates and moved the court through Notice of Motion dated 23<sup>rd</sup> May 2023, which is the subject of this ruling. The following orders are sought in the application:
  1. [Spent]
  2. That the Hon. court be pleased to review and set aside its orders made on 30/1/2023.
  3. That the Hon. court be pleased to order that the defendant applicant here be heard on the application of the plaintiff dated 19/9/2022 before any action is taken on land parcel No Kakamega/Malava /1097.
  4. That costs be provided for.
4. Notice of Motion dated 23<sup>rd</sup> May 2023 is supported by an affidavit sworn by the defendant. He deposed that the consent orders of 30<sup>th</sup> January 2023 were meant to “snatch” land from him, and that the application dated 19<sup>th</sup> September 2022 and the date of its hearing were not served on him.
5. The plaintiff opposed the application through a replying affidavit in which he deposed that the defendant was aware of the orders issued by the Deputy Registrar 2<sup>nd</sup> July 2021 and that the orders of 30<sup>th</sup> January 2023 were made in the presence of counsel representing the defendant.
6. Parties sought to canvass the application through written submissions. The court gave directions for filing and exchange of submissions. Ultimately, the defendant filed submissions, but the plaintiff did not file any. I have considered the application, the affidavits, and the submissions. The sole issue for determination is whether the orders sought should issue.
7. The orders of 30<sup>th</sup> January 2023 were made by consent. It is trite that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting aside a contract. See *Flora N. Wasike v Destimo Wamboko* [1988] eKLR. Where a consent order is made in the presence of and with the consent of counsel, it is binding on all parties to the proceedings and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court, or if it was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement. A duly instructed advocate has implied authority to compromise a matter on behalf of his client. See *Hirani v Kassam* (1952) 19 EACA 131 and *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485.
8. The reasons given by the defendant for seeking setting aside of the consent order herein are that the consent orders of 30<sup>th</sup> January 2023 were meant to “snatch” land from him, and that the application dated 19<sup>th</sup> September 2022 and the date of its hearing were not served on him. As stated earlier, the consent was recorded in the presence of Mr Kombwayo who was representing the defendant. The defendant has not demonstrated that the consent was recorded through fraud or collusion, or through an agreement contrary to the policy of the court. It seems to me that the defendant has simply had a change of mind. The parties herein have recorded several consents and I find nothing out of the ordinary as regards the impugned consent.
9. I find no merit in Notice of Motion dated 23<sup>rd</sup> May 2023. I dismiss the application with costs to the plaintiff.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**D. O. OHUNGO**

**JUDGE**



**Delivered in open court in the presence of:**

No appearance for the Plaintiff

Ms Anono holding brief for Mr Mutoka for the Defendant

Court Assistant: E. Juma

