



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 6 OF 2020**

**SAMMY LUKUYU ADIEMA.....PLAINTIFF**

**VERSUS**

**CHARLES SHIMWATI SHISIKANI.....DEFENDANT**

**RULING**

The first application is dated 1<sup>st</sup> February 2019 and is brought under Order 51 rule 1 of the Civil Procedure Rules 2010 and section 1A, 1B, 3, 3A and 63 of the Civil Procedure Rules seeking the following orders:-

1. That the subdivisions arising from L.P. N. S/Kabras/Shamberere/2650 to wit; L.P. N. S/Kabras/Shamberere/3855, 3856 be cancelled and the suit land to revert to the original L.P. N. S/Kabras/Shamberere/2650.
2. That the honourable court be pleased to issue an order directed to the Land Registrar Kakamega County and County Surveyor Kakamega to visit L.P. N. S/Kabras/Shamberere/2650 and curve out 2 acres for the purpose of execution of a court order in Kisumu Court of Appeal No. 3 of 2014.
3. That the OCPD Kakamega North and OCS Kabras Police Station provide security for the exercise.
4. That costs of this application be borne by the respondent/plaintiff

It is based on the grounds that the Court of Appeal in Kisumu Court of Appeal No. 3 of 2014 made a ruling disposing of the matter. That during the pendency of the appeal the respondent subdivided the suit land making it impossible to execute the ruling.

The respondent submitted that the application seeks to interfere with the judgement of the Court of Appeal which this court has no powers to do. That the only avenue for the applicant is to go back to the Court of Appeal for interpretation or execution of the decree.

The second application is dated 19<sup>th</sup> October 2020 and is brought under Order 40 rules 1 and 3 of the Civil Procedure Rules 2010, section 3A of the Civil Procedure Rules seeking the following orders:-

1. That this application be certified urgent and heard exparte in the first instance.
2. That pending the hearing and determination of this application interparties the respondent be restricted by an order of injunction from trespassing onto L.P. N. S/Kabras/Shamberere/3855 and continuing to erect thereon house structures and that upon interpartes hearing be he ordered to demolish the structures he has already erected.

3. Costs of this application be provided for.

It is grounded on the grounds that the applicant was ordered by the Court of Appeal to transfer two (2) acres to the respondent herein of which he has signed transfer documents but the respondent has refused to sign on his part. That the respondent has trespassed and left the two (2) acres the applicant allocated to him comprised in L.P.N. S/Kabras/Shamberere/3882 and started constructing house structures onto the parcel remaining on the applicant comprised in L.P.N. S/Kabras/Shamberere/3855. That this is a concluded matter and the respondent is the one who moved the court by an application dated 1<sup>st</sup> February, 2019 but while it is still pending, he has started constructing houses on the applicant's land S. Kabras/Shamberere/3855 so that it may seem he also has been staying on that portion to comply with the orders he is seeking in his application dated 1<sup>st</sup> February, 2019.

The application is opposed on the grounds that orders sought are incapable of being granted as there is no suit to sustain them, the suit herein having been determined by the court on Appeal in Kisumu High Court Civil Appeal No. 3 of 2014. Orders sought cannot stand on their own in vacuum unless there is a main suit.

This court has considered both applications and submissions therein. It is a finding of fact that judgement was delivered by the High Court in this matter on the 14<sup>th</sup> November 2013. The matter went on appeal and judgement was delivered on 9<sup>th</sup> December 2014. This court is surprised that the parties have come back to this court for execution and/or orders of injunction. This court is functus officio. Any orders sought should be canvassed in Kisumu Civil Appeal No. 3 of 2014. This court cannot interfere with orders issued by a superior court. I find that both the applications before me are an abuse of the court process and are not merited. I dismiss both applications with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 15<sup>TH</sup> DECEMBER 2020.**

**N.A. MATHEKA**

**JUDGE**



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