



**Munywa v Mbuvi (Environment and Land Appeal E015 of 2020)
[2023] KEELC 18106 (KLR) (13 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18106 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E015 OF 2020
CA OCHIENG, J
JUNE 13, 2023**

BETWEEN

SAMUEL MWANIA MUNYWA APPELLANT

AND

PATRICK MUINDE MBUVI RESPONDENT

*(Being an Appeal from the Judgment of Chief Magistrate's Court at Machakos in ELC
No. 15 of 2018 delivered on 5th March, 2020 by Hon. Anne Nyoike, Principal Magistrate)*

JUDGMENT

Introduction

1. By a Memorandum of Appeal dated the April 2, 2020 and filed on December 1, 2020, the Appellant appealed against the Judgment of Hon Anne Nyoike, Principal Magistrate made on the March 5, 2020 in Machakos CM ELC No 15 of 2018 between Samuel Mwanja Munywa Versus Patrick Muinde Mbuvi. The genesis of this Appeal is the Judgment by Hon Anne Nyoike, Principal Magistrate where she dismissed the Appellant's suit and entered Judgment in favour of the Respondent.
2. The Appellant being dissatisfied with the whole of the said Judgment filed a Memorandum of Appeal dated the April 2, 2020 which contains the following grounds:-
 1. The learned Principal Magistrate erred in law by failing to make a finding that the suit as filed by the Appellant and the prayers sought therein were competent and did warrant the orders sought in that.
 2. The Appellant did actually purchase a piece of land measuring approximately 224 feet inches by 195 feet by 157 feet 7 inches by 81 feet from one Muoni Mbuvi now deceased which was to be excised from land parcel Wamunyu/Kaitha/210.



3. The Appellant's witness and the Deputy County Commissioner confirmed that the Appellant did purchase part of land Wamunyu/Kaitha/210 and the Deputy County Commissioner gave Directives that purchase price be refunded to the Appellant and/or Appellant do own the purchased portion of land.
 4. The Appellant purchased a portion of Wamunyu/Kaitha/ 210 from Muoti Mbuvi (deceased) which portion was part of Muoti Mbuvi's share of inheritance from her mother in law namely Wanza Munywa (deceased).
 5. The Appellant was not involved by the Respondent in the issues of succession during the time of Administering the Estate of Wanza Munywa who was mother in law to the Seller namely Muoti Mbuvi as required by the law of succession in order for the land parcel Wamunyu/ Kaitha/210 to be distributed fairly to the beneficiaries of the Estate of Wanza Munywa.
 6. The learned Principal Magistrate erred in law and fact by misdirecting and prejudicing herself against the Appellant's case in considering only the Respondent's case.
 7. The trial court only considered the Defendant's case and never commented on the Plaintiff's case.
 8. The learned Principal Magistrate fell in error when she failed to point out issues for determination, analysis, decision and reasons for the decision.
 9. The learned Principal Magistrate failed to make a finding of both fact and law that the Respondent herein confirmed that one Muoti Mbuvi who was one of the family members of Wanza Munywa had sold part of land parcel Wamunyu/Kaitha/210 to the Appellant and the said Appellant was therefore a beneficiary of the estate of Wanza Munywa (deceased) who was the registered owner.
3. The Appeal was canvassed by way of written submissions.

Submissions

Appellant's Submissions

4. The Appellant in his submissions highlighted the Judgment of the Lower Court and contended that he was not accorded a chance to give his evidence. He argued that submissions could not be treated as evidence or take the place of evidence. He averred that parties are bound by their pleadings. He claimed the court declined to analyze his evidence as well as that of his witnesses. He made reference to the evidence of Mrs. Muoti and Nduku Musau Mumina who confirmed that there was sale of suit land. To support his averments, he relied on the following decisions: *Daniel Toroitich Arap Moi & Another v Mwangi Stephen Murithi & Another [2014] eKLR*; *Joseph Mbuta Nziru v Kenya Orient Insurance Company Ltd [2015] eKLR*; and Ugandan Case of *Libyan Arab Uganda Bank for Foreign Trade & Development & Anor v Adam Vassiliadis [1986] UG CA 6*.

Respondent's Submissions

5. The Respondent in his submissions insists that the Vendor of the suit land lacked capacity to sell the said land. He argues that he did not purchase a portion of the suit land as he is a beneficiary of the proprietor Wanza Munywa who was his grandmother. He avers that by the time of the sale of the suit land, the proprietor was deceased hence making the sale null and void. Further, that the Appellant did not produce the purported Sale Agreement or any other document before the trial court to support his claims. He argues that the Appeal was filed out of time as Judgment was delivered on March 5, 2020



while the Appeal was lodged on December 2, 2020 hence leave was required before the instant Appeal could be filed. To support his arguments, he relied on the following decisions: *Ratilal Gova Sumaria & Another Vs Allied Industries Limited [2007] eKLR* and *First American Bank of Kenya Ltd v Gulap P Shab & 2 Others [2002] 1 EA 65*.

Analysis and Determination

6. I have considered the Memorandum of Appeal, Record of Appeal and rivalling submissions, the following are the issues for determination:-Whether there is a valid Appeal before this Court.Whether the Appellant is entitled to the orders sought in this Appeal.Who should bear the costs of the Appeal.
7. As to whether there is a valid Appeal before this Court.
8. The Judgment in Machakos CM ELC No 15 of 2018 which is subject to this Appeal was delivered on March 5, 2020. The Appellant being dissatisfied with the said Judgment filed a Memorandum of Appeal dated the April 2, 2020 on December 1, 2020. On lodging an Appeal from a Subordinate Court to the Environment and Land Court, Section 79G of the *Civil Procedure Act* provides that:-

' Every appeal from a Subordinate Court to the High Court shall be filed within a period of thirty days from the date of the Decree or order appealed against, excluding from such period any time which the Lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the Decree or order:

Provided that an Appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the Appeal in time.'
9. From the Court record, I note the Appellant never sought enlargement of time to file the Memorandum of Appeal and neither has he explained why he delayed with almost eight months to file it. In the case of *Velji Shabmad v Shamji Bros. and Popatlal Karman & Co [1957] EA 438*, it was held thus:-

' In the interests of the public the court ought to take care that appeals are brought before it in proper time and before the proper court or registry and when a Judgment has been pronounced and the time for Appeal has elapsed without an Appeal the successful party has a vested right to the Judgment which ought, except under very special circumstances, to be made effectual. And the Legislature intended that Appeals from Judgments should be brought within the prescribed time.'
10. Based on the facts before me while relying on the legal provisions I have cited as well as associating myself with the quoted decision, insofar as this Appeal was admitted, I find that there is no valid Appeal before me since the Memorandum of Appeal was filed out of time without leave of the Court. It is my considered view that the Appellant before filing the Memorandum of Appeal almost eight (8) months late, ought to have sought for enlargement of time to lodge the Memorandum of Appeal out of the statutory period in accordance with Section 79G of the *Civil Procedure Act*, but he failed to do so.
11. In the circumstance, I will not deal with the merits of the invalid Appeal but proceed to strike it out.
12. On the issue of costs, since the parties are related, each party to bear its own costs.

I so Order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 13TH DAY OF JUNE, 2023



CHRISTINE OCHIENG

JUDGE

