



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 3163 OF 1990**

**FRANCIS KINUTHIA THIONG'O**

**SHADRACK WAWERU KAMANU**

**THIONG'O KING'ANG'I.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER NJUGUNA.....DEFENDANT/RESPONDENT**

**RULING**

This is a very old case which regrettably is still in our records. I have had occasion to make this observation in this record before and in particular 14<sup>th</sup> March, 2016. The record would show that on 25<sup>th</sup> May, 2010 the court delivered a ruling in an application seeking to compel the Registrar of Titles to rectify the title relating to parcel No. Dagoretti/Kangemi/557 as per the court order/decreed issued on 26<sup>th</sup> November, 1990. In addition there was a prayer that a vesting order for that parcel of land be issued in favour of the applicant Thiong'o Kigangi.

After considering the matters placed before the court, I observed,

**“It would appear the suit by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff as against the defendant has abated in view of the provisions of Order XXIII Rule 3 (1) and (2).**

**Whatever the case, the judgment having a direct bearing on the suit property herein was delivered on 10<sup>th</sup> June, 1995 and the decree issued on 26<sup>th</sup> November, 1990.**

**Section 4 (4) of the Limitation of Actions Act, Cap 22 Laws of Kenya provides that an action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered. Clearly, the application before me is forwarded on the judgment in HCCC No. 310 of 1983 (O.S). Indeed the applicant has mentioned the dates of the decree, ie 26<sup>th</sup> November, 1990. ....**

**This issue goes to jurisdiction and I must find, as I hereby do I have no jurisdiction to entertain this application. It follows that the application must fail and the same is hereby dismissed with costs to the defendant. Orders accordingly.”**

There is a multiplicity of applications in this record which may cloud the approach to the issue in dispute. On 12<sup>th</sup> April, 2011 counsel for the defendant appeared before me to argue an application dated 17<sup>th</sup> September, 2010 and informed the court that, although the said application had been served no reply had been filed and since the orders sought were straight forward, the court should endorse the same. The court agreed and granted the orders sought in the said application. This was followed by an application by the plaintiff dated 30<sup>th</sup> March, 2015. This is the subject of this ruling.

In that application, the plaintiff sought an order to stay execution of the orders made on 12<sup>th</sup> April, 2011 since they were ex parte, and that the same be set aside. The grounds set out therein are that the applicants were not aware of the proceedings before the court and the orders issued ex parte amounted to the court sitting on its own appeal.

Having perused the file, I have confirmed that a firm of advocates by the name of Akoto and Company Advocates were served with the application slated for hearing on 1<sup>st</sup> March, 2011. However, on the said date, no proceedings took place. Another date was taken on 10<sup>th</sup> March, 2011 where both parties were represented in the registry by Patrick for Gakuru & Company and Benjamin for Akoto & Company Advocates. The date of 12<sup>th</sup> April, 2011 was therefore taken by consent and therefore it cannot be said the proceedings were conducted ex-parte.

Whatever the case, the court having made a specific finding on 25<sup>th</sup> May, 2010 that it had no jurisdiction to handle this matter based on Limitation of Actions Act, no further proceedings could be entertained by the same court including those of 12<sup>th</sup> April, 2011. In that regard I take full responsibility for what transpired beyond the ruling of the court dated 25<sup>th</sup> May, 2010.

Having said so, any further proceedings thereafter were a nullity and cannot be invoked to confer any benefit upon any of the parties herein. The application dated 30<sup>th</sup> October, 2015 therefore succeeds for the sole reason that the court had no jurisdiction to revisit the matter after 25<sup>th</sup> of May, 2010. Each party shall bear their own costs.

*Dated, signed and delivered at Nairobi this 14<sup>th</sup> Day of March, 2019.*

**A. MBOGHOLI MSAGHA**

**JUDGE**