



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 345 OF 2015

ARTHUR NDURU GITHIRE..... APPELLANT

- V E R S U S -

PETER KAHIA GIATHI sued as the chairman of

(BUXTON FARMERS CO. LTD).....1ST RESPONDENT

BUXTON FARMERS CO. LTD 2ND RESPONDENT

RUTH WANJA OSTYULA..... 3RD RESPONDENT

(Being an appeal from the ruling of the Senior Resident Magistrate's Court at Limuru by Honourable T. Ole Tanchu SRM delivered on 23rd June 2015 in Civil Suit number 3 of 2013)

JUDGEMENT

1) Pursuant to the motion dated 23rd April 2015, Hon. T. Ole Tanchu, learned Senior Resident Magistrate, enjoined Ruth Wanja Otsyula as an interested party to the suit pending before the trial court. Being dissatisfied with the aforesaid decision, Arthur Nduru Githire, the appellant herein, preferred this appeal.

2) On appeal the appellant put forward the following grounds:

1. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 whereas the applicant/Interested party before the trial court did not adduce any sufficient grounds to be enjoined as an interested party to the proceedings before the trial court.

2. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 whereas the applicant/interested party before the trial court did not produce any facts or information or documents in support of her claim to render assistance to the trial.

3. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same would serve as great injustice to the appellant and were highly prejudicial to the appellant in view of the delay that would occasion the proceedings before the trial court.

4. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same arrested and stayed the order of the honourable Ag. Principal Magistrate (Mrs) A.R. Ireri of 5th February 2013.

5. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same arrested and stayed the order of the same honourable Senior Resident Magistrate T. Ole Tanchu of 9th May 2013.

6. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same was arrested and stayed the order of the honourable Justice GBM Kariuki of 23rd December, 2013 in the Succession Cause no. 113 of 1995 at the High Court of Kenya at Nairobi.

7. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same arrested and stayed the order of the honourable Justice Musyoka of 19th March 2013 in the Succession Cause no. 113 of 1995 at

the High Court of Kenya at Nairobi.

8. THAT the learned magistrate erred in law and in fact in granting the application dated 23rd April 2015 in that the same arrested and stayed the order of the honourable Justice Kimaru of 23rd October 2014 in the Succession Cause NO. 113 of 1995 at the High Court of Kenya at Nairobi.

9. THAT the learned magistrate erred in law and in fact in failing to appreciate the evidence adduced before him.

10. THAT the learned magistrate erred in law and in fact in disregarding the evidence and submissions by the appellant before the trial court.

11. THAT the learned magistrate erred in law and in fact by failing to evaluate the evidence tendered before him judiciously before arriving at his finding.

12. THAT the learned magistrate erred in law and in fact conducting the trial in a casual manner.

3. Though the appellant has put forward a total of 12 grounds of appeal, the main ground which commends itself for determination is the question as to whether or not the trial magistrate was justified to make the order of enjoinder.

4. When the appeal came up for hearing, learned counsels appearing in this appeal recorded a consent order to have the appeal disposed of by written submissions. I have re-evaluated the arguments presented before the trial magistrate to support and oppose the motion dated 23rd April 2015. I have further considered the rival written submissions. It is the submission of the appellant that the learned Senior Resident Magistrate erred when he made orders to enjoin Ruth Wanja Obsyula, the 3rd respondent as an interested party to the suit in the subordinate court yet there were no sufficient reasons. It is also argued that the trial magistrate disregarded the appellant's submissions and evidence. The appellant further complained that the trial magistrate failed to evaluate the evidence presented before the court.

5. The 3rd respondent vehemently opposed this appeal by arguing that she provided all the relevant information which guided the trial magistrate in arriving at his decision to enjoin her to the suit.

6. A careful perusal of the grounds set out on the face of the motion dated 23.4.2015 plus the facts deponed in support and against the motion, will reveal that the 3rd respondent had presented facts showing that she was a party in succession cause no. 113 of 1995 where the parties were heard and a ruling delivered by the High Court directing the parties of sale shares between the beneficiaries to the exclusion of the appellant.

7. The 3rd respondent had filed the application timely with a view to prevent the trial court from making a decision which would contradict those already made by the High Court. The appellant herein filed a replying affidavit to oppose the 3rd respondent's motion. It is clear from the ruling of Hon. Ole Tanchu that the appellant's replying affidavit was considered. The learned Senior Resident Magistrate noted that the replying affidavit discloses the fact that various rulings had been made by the High Court over the subject matter which was before him. In the end, the trial magistrate concluded that the 3rd respondent had adduced sufficient evidence to be enjoined. On my part, I have re-evaluated the case that was before the trial court, and I am satisfied that the trial magistrate arrived at the correct decision in allowing the application. I am also satisfied that the learned Senior Magistrate considered the relevant material placed before him analysed the same before reaching at his decision.

8. In the end, I find no merit in this appeal. The same is dismissed with costs being awarded to the 3rd respondent.

Dated, Signed and Delivered in open court this 9th day of March, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent