

REUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 480 OF 2016

RAMADHAN RAJAB.....APPELLANT

VERSUS

RICHARD KIARIE WAWERU & 19 OTHERS.....RESPONDENTS

(Being an appeal from the Judgment of Hon. M. Chesang (Mrs) R.M. delivered on 20th June 2016 in the Chief Magistrate's Court in Civil Suit No. 1638 of 2015 at Nairobi Law Courts)

JUDGMENT

The appellant herein filed a suit in the lower court relating to a property known as plot No. 60 Pumwani/Majengo which is occupied by the respondents herein. He had sought an injunction to stop the respondents from entering, remaining, leasing, hiring, pledging, selling and or dealing with any or interfering with his quiet possession of the suit property.

He also claimed damages or mesne profit from the date of wrongful entry until possession was delivered to him. Additionally, he claimed vacant possession of the suit premises and in default an order for eviction of the respondents. Finally, he claimed costs of the suit and interest.

After what appears to be a hearing his suit was dismissed by the lower court. That prompted the present appeal. Several grounds of appeal appear in the Memorandum of Appeal contained in the record of appeal filed herein and dated 20th July, 2016.

The appellant is aggrieved by the said judgment which according to the record is only one paragraph. I deem it necessary to set out the said judgment in full to inform the orders that I am going to make in this appeal. It reads as follows,

“Before me is a plaint dated 30.3.2015 seeking judgment as prayed on the face of the plaint. Interlocutory Judgment was entered on 10.8.2015 in default of defence and matter proceeded undefended. However, the plaintiff has not annexed title to the subject property known as plot No. 60 Pumwani/Majengo, Nairobi. Therefore, the suit shall fail and the entire plaint is dismissed.”

As the appellate court I am supposed to consider and evaluate evidence adduced before the lower court and make an independent decision. The appellant, according to the record, produced a list of documents alongside his witness statement which he adopted as his oral testimony. The court marked his documents as exhibits.

Regrettably however, there was no analysis of those exhibits in the judgment above cited and therefore I am unable to exercise my mandate as the appellate court to determine whether or not the appellant proved his case in the lower court. I am equally unable to take the position of the trial court to revisit the appellant's pleadings alongside his exhibits for the sole reason that the proceedings are scanty and not of any help to this court.

After going through the record before me, I have formed the view that the learned trial magistrate did not accord the appellant a fair hearing which led to denial of justice in the circumstances of this case. Where a party has filed a witness statement and produced exhibits relating to the claim, it is only fair and just that the trial court refers to all relevant material to arrive at a just conclusion even where it is a formal proof.

Having failed to do so, the trial magistrate departed from the known principles of a fair trial and contents of a judgment. The only order that commends itself in this appeal is that the appeal hereby succeeds, and the proceedings and judgment of the lower court are set aside in their entirety.

I direct that there shall be a fresh hearing by way of formal proof before another magistrate of competent jurisdiction. Since the respondents had been served and failed to come to court during the said formal proof it shall not be necessary for them to be served for this exercise. There shall no orders as to costs.

Dated, signed and delivered at Nairobi this 18th Day of April, 2018.

A. MBOGHOLI MSAGHA

JUDGE