



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 209 OF 2015

GEOFFREY MWANGI KURIA.....APPELLANT

- V E R S U S -

EMBAKASI RANCHING COMPANY LIMITED.....RESPONDENT

(Being an appeal from the judgement of Hon. D. Ole Keiwua (Mr) SPM dated and delivered on 10th April, 2015 in Nairobi CMCC no. 3777 of 2008)

JUDGEMENT

1. Geoffrey Mwangi Kuria, the appellant herein, filed an action against Embakasi Ranching Co. Ltd, the respondent herein, before the Chief Magistrate's Court, Milimani Commercial Courts vide the plaint dated 27th June 2008 in which he sought for judgement as follows:

a. The plaintiff further prays that there be a declaration that he is the lawful exclusive owner of plots P 667, P667B, P1044 and P1044B situate in Ruai within the Embakasi ranching scheme.

b. That an injunction does issue against the defendant its agents, servants and/or employees from trespassing, alienating, damaging and/or continued construction in the deceased parcels of land known P667, P667B, P1044 and P1044B situate in Ruai within the Embakasi ranching scheme and/or otherwise howsoever from interfering with the said parcels of land.

2. The respondent filed a defence to deny the appellant's claim. When the suit came up for hearing, the same proceeded ex parte when the respondent failed to turn up in court. The suit was heard and dismissed by Hon. Ole Keiwa, learned Senior Principal Magistrate. The appellant was aggrieved hence this appeal.

3. On appeal, the appellant put forward the following grounds in his memorandum:

1. That the lower court erred in law and fact in dismissing the plaintiff's case yet it had entered an interlocutory judgment.

2. That the lower court erred in law and fact by completely ignoring the plaintiff's oral and documentary evidence to support his claim.

3. The lower court erred in law and in fact by taking into account extraneous matters not pleaded all together and thus making uncalled and unnecessary observations.

4. The lower court erred in law and in fact by relying on the magistrate's non solicited views to make judgment.

4. When the appeal came up for hearing, this court directed the appeal to be disposed of by written submissions on the application by the appellant's advocate.

5. I have re-evaluated the case that was before the trial court. I have also considered the written submissions. The recorded evidence shows that the appellant testified before the trial court. He adopted the contents of the witness statement he had executed and proceeded to produce the documents in his list of documents. The appellant told the trial court that the respondent allocated him two plots after paying ksh.6000/=. He produced the acknowledgement receipts. The appellant further produced the beacon certificates. He also alleged that the respondent did double allocation. The learned Senior Principal Magistrate noted in his judgement that the appellant had claimed he was allotted two plots as a shareholder of the respondent. He also took into account the appellant's assertion that the respondent had re-allocated the same plots to other people. He further acknowledged that the appellant had produced receipts of payments made for the plots to the respondent. The learned Senior Principal Magistrate formed the opinion that the value of the buildings erected on the plots were beyond ksh.5,000,000/= hence the court lacked the pecuniary jurisdiction. He also stated that it was not the duty of the court to allocate plots. The trial magistrate went ahead to strike out the suit for the above reasons.

6. On appeal, the appellant argued that the trial magistrate erred when he failed to consider his pleadings and the evidence tendered. It was pointed out that at no time did the appellant claim for value of the land. I have already outlined the kind of orders the appellant sought in his plaint. It is apparent that the appellant sought for a declaration that he is the lawful owner of four plots nos. P667, P667B, P1044 and P1044B in Ruai. He also sought for an order of injunction to restrain the respondent his servants, agents and employees from trespassing, alienating damaging or continuing constructing on the aforesaid plots. The learned Senior Principal Magistrate introduced the issue of valuation in his judgment. He formed the opinion that the buildings put up on the plots in dispute were worth more than kshs. 5 million. The learned magistrate also pointed out that the appellant had failed to present to court a valuation report. The issue touching on the value of the suit property was not raised in the pleadings. The figure of ksh. 5 million was plucked from the air. In the defence, the respondent merely stated that the jurisdiction of the court is denied. The respondent did not attend court nor call for evidence to establish the assertion that the trial court had no jurisdiction to hear and determine the suit. The learned Senior Principal Magistrate made a curious observation. He stated that it is not the duty of the court to allocate land to parties. It only declares interests. In the plaint, the appellant did not ask the court to allocate him a plot but he beseeched the court to declare him as the lawful owner and allottee of the plots in dispute. After a careful analysis of the case that was before the trial court and after taking into account the submissions presented before this court, I am convinced that the learned Senior Principal Magistrate fell into error. With respect, I am persuaded by the appellant's submission that the learned magistrate failed to take into account the pleadings and evidence. The learned magistrate merely noted the evidence but he failed to analyse and put into context the appellant's case. In short, the learned Senior Principal Magistrate failed to consider the action on its merits. The appeal is found to be meritorious.

7. In the end, the appeal is allowed. The order dismissing the appellant's suit is set aside. In the circumstances of this case, a fair order is to restore the suit which I hereby do, to be heard denovo by another magistrate of competent jurisdiction other than Hon. Ole Keiwua.

8. Each party to bear its own costs of the appeal.

Dated, Signed and Delivered in open court this 23rd day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent