



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 123 OF 2011

SARAH MARIAH MOGERE APPELLANT
-VERSUS-
MARTHA ANENE RESPONDENT

JUDGEMENT

1. This appeal arises out of a decision of Hon. P. N. ARERI, R.M. made on 29.7.11 in which he held that the application dated 17.4.11 had been overtaken by events.

2. In the application dated “17.4.11” the appellant had sought orders to restrain the Respondent from selling motor vehicle

Reg. No. KAP 081N. The application was filed in court on 7.4.11 according to the receipt No.4022434 issued on 7.4.11.

3. On 7.4.11, interim orders were issued pending the hearing and determination of the application. The application proceeded to inter partes hearing on 29.7.11.

4. During the hearing of the application, it was submitted on behalf of the Respondent as follows:-

“We submit that the application is bad in law and an abuse of the court process. The defendant was to be stopped from the sale of the motor vehicle. The vehicle had since been sold. We urge the court to dismiss the application.”

5. The court then proceeded to make orders on the spot stating as follows:-

“The application dated 17.4.11 is overtaken by events.”

6. Mr. Abok, learned counsel appeared for the appellant and Mr. Khayumbi, learned counsel appeared for the Respondent. I have taken into account the submissions of the counsels

7. It is this order by the lower court that has precipitated this appeal. The grounds of appeal are as follows:-

“1. That the learned trial magistrate erred in law and infact in entertaining evidence from the bar.

2 The learned trial magistrate erred in law and fact in failing to consider the issues raised by the application dated 7.4.11.”

8. It is clear from the record of appeal that the lower court entertained evidence from the bar. I have gleaned the affidavit in reply sworn by the Respondent on 20.4.11. The same makes no mention of the sale of the motor vehicle.
9. The orders in question do not reflect any consideration of the issues raised in the application. The lower court only seems to have considered the issue of the application “having been overtaken by events”.
10. The appeal has merit and is allowed. The order of the lower court dated 29.7.11 is hereby set aside. The application filed in court on 7.4.11 is to be heard *de novo* before a different magistrate. Costs of the application to the applicant.

Delivered, dated and signed at Kakamega this 2nd day February, 2012.

B. THURANIRA JADEN
J U D G E