



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Miscellaneous Case 750 of 2009**

**KARUCHI WAIGI .....APPLICANT**

**V E R S U S**

**RACHEAL WANJIKU WAIGI .....RESPONDENT**

**R U L I N G**

This is an application under the proviso to section 79G of the Civil Procedure Act, Cap 21 for leave to file appeal out of time. What is sought to be appealed against is a decree of the lower court in Kiambu CMCC NO. 307 of 2004 passed on 23<sup>rd</sup> July, 2009 by which the Applicant was ordered to be evicted from the Respondent's parcel of land, L. R. KIAMBAA/KARURI/T.976. The Respondent has opposed the application.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing.

The Respondent's parcel of land, L.R. KIAMBAA/KARURI/T.976, is a sub-division of the original parcel, L. R. KIAMBAA/KARURI/T.589 which had been registered in the Applicant's name. By a decree in KIAMBU SPM LAND CASE NO. 25 OF 2000, the Respondent was adjudged to be entitled to a half portion of parcel T.589. A sub-division of the same resulted in parcel T.976 which was registered in the Respondent's name.

The said decree in Kiambu SPM Land Case No. 25 of 2000 determined the respective rights of the Applicant and the Respondent in parcel T.589. The Applicant did not appeal against that decree.

The Respondent then filed Kiambu CMCC NO. 307 of 2004 for the eviction of the Applicant from parcel T.976 to enable her to take possession. As already seen, she succeeded. Objection to jurisdiction of the lower court to deal with the suit for eviction had been taken by the Applicant, but he was overruled. He did not appeal against that ruling.

It is common ground that the present application was made after the decree of the lower court was fully executed. The Applicant has given the unlikely reason for delay that he lacked funds to purchase a copy of the proceedings and judgment. But he does not state what amount was required. The Respondent, who is the Applicant's sister, has stated in the replying affidavit that the Applicant is her neighbor, and that she knows is a dairy farmer who delivers a substantial quantity of milk to the local dairy every day. It is instructive that the Applicant was represented by counsel both in the lower court and here.

It seems to me that the Applicant's application is an afterthought, coming belatedly, and only after the decree had been executed. The Applicant has not satisfied the court, as required by the proviso to section 79G aforesaid, that he had good and sufficient cause for not filing the appeal in time. His application is without merit and must be refused. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2010

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2010**