



REPUBLIC OF KENYA

THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 85 of 2002

JOHN NDUNGU MUBEA.....1ST APPELLANT

NANCY GAKAKI.....2ND APPELLANT

JOYCE NJOKI.....3RD APPELLANT

VERSUS

JOHN NDUNGU MUBEARESPONDENT

JUDGMENT

This appeal arises from the decision of the Chief Land Registrar at Murang'a who dismissed an appeal lodged by the appellants herein against the decision of the Land Registrar Murang'a, in respect of parcels of land known as Loc 6/Githembe/271 and Loc 6/Giathaini/127.

The appellants therein have complained that the Land Registrar at Murang'a went contrary to the principles of fair distribution of land in trying to partition the said parcels of land amongst the parties involved in this dispute.

The genesis of this matter is to be found in Civil Appeal No.76 of 1990 by the Court of Appeal wherein the learned judges made an order:-

1. That the two parcels of land namely Loc 6/Giathaini/127 and Loc 6/Githembe/271 be subdivided and each of the deceased's 5 sons be given one hectare.
2. That the remaining 1.19 hectares be divided equally between the deceased's two unmarried daughters namely Nancy Gacaki and Joyce Njoki.

The beneficiaries herein are the children of Ronald Mubea Kaigi in whose name the parcels of land were then registered.

Being dissatisfied by the ruling of the Chief Land Registrar aforesaid the appellants herein raised ten grounds of appeal

which I do not deem necessary to set out in full. The summary of the grounds of appeal are that the District Land Registrar was biased in his conduct of the hearing, and that the allocation of the property did not take into consideration the economic value of the parcels of land. There was also no evidence that the District Land Registrar visited the parcels of land and therefore undue regard for permanent development on the parcels of land should not have been given.

It is also their complaint that the Chief Land Registrar misdirected himself in failing to find that the portion of land allocated to the 1st appellant was steep and inaccessible and so were the portions allocated to the 2nd and 3rd appellants which were unsuitable for residential purposes and were of little economic value.

The said allocations were also contrary to the spirit of the decision of the Court of Appeal. The appellants also complained that the parcels allocated to them had no access road and in any case, the same were less in size than what the Court of Appeal had directed. It is instructive to note that the complaint about the size of the parcels allocated to the appellants was subsequently abandoned.

They also complained that the proposed sub-divisions presented by them was ignored or disregarded while this would have been fair to all the parties as it would not have uprooted the established homes even though they were established in breach of the court order.

In dismissing the appellant's appeal, the Chief Land Registrar said as follows:

"I agree with the respondent's submission that the proposal by the Land Registrar was done in the only feasible and fair way by having regard to:

- (i) The need to provide a peaceful solution between the two homes by preventing any discord that would arise from sharing neighboring parcels.**
- (ii) The need to sub-divide into economical and consolidated pieces of land.**
- (iii) Ensuring that all the plots had access to the road.**
- (iv) Ensuring that the parties would not be unduly disadvantaged by preventing the uprooting the established homes."**

All learned counsel filed submissions in the argument of this appeal which I have read. At some stage this court mandated the Deputy Registrar, Mrs. Rose Ougo to visit the suit properties and file a report. The learned Deputy Registrar visited the suit properties and filed her report dated 29th October, 2009. That report is part of this record.

The learned counsel in this appeal with respect have without the authority or leave of the court attempted to give further evidence in the form of photographs which I must say should have been presented when the District Land Registrar was deliberating on the issue. For purposes of record I have elected to ignore those photographs.

There is some correspondence on record that the parties herein have all along not trusted the office of the Registrar in Murang'a in that on two occasions the presiding Land Registrar had to be changed on the complaint of either of the two parties. That notwithstanding, the report was subsequently made by Mr. S.K. Gatheru and the decision reached in accordance with the instructions of the Court of Appeal. It is instructive to note that the Court of Appeal did not and could not have given directions

as to the nature or topography of the land to be allocated to the parties, and that is why the Registrar had to be detailed to do the exercise.

It is also clear from the material before me that the relationship between the appellants and the interested parties herein has never been cordial. One would have hoped that the subdivision of the two parcels of land and the allocation to the respective parties would have settled this matter once and for all.

Be that as it may, I believe going by the material before me and resting with the report filed by the Deputy Registrar of this court, the District Land Officer at Murang'a did his best in the circumstances of the case and that the upholding of his ruling or decision by the Chief Land Registrar was not a misdirection whatsoever.

The legitimate expectation of the parties herein and in particular the appellants was met. I have found no room or reason to fault the decision of the Chief Land Registrar in that regard.

At first one Mr. Muriuki was detailed to facilitate the order of the Court of Appeal. The appellants complained and one Mr. Kanyoro took over the exercise. The other parties complained and a change was made by the Chief Land Registrar to have Mr. S.K. Gatheru finalise the matter. This appears at page 59 of the Record of Appeal in a letter by the Chief Land Registrar to the advocates for the appellants.

Mr. S.K. Gatheru visited the two parcels of land. This is to be found in his Ruling at page 50 of the record where he states;

“My visit on the ground with the surveyor shows that”

He also heard the parties. He says as much in his ruling at page 52 of the record. He gave consideration to all developments.

I have not found any evidence of bias. I also have not seen any flaws in the partitions that adversely impact against the interests of the appellants.

With respect, the Chief Land Registrar was right to have upheld the ruling of the Land Registrar.

When one considers the provisions of law as to whether or not the appeal was filed in time the window provided in that regard is to be found in the record of appeal and in particular the letter dated 28th April, 1998 at page 66 of the Record of Appeal. It is not necessary for me therefore to address the other issues raised by the learned counsel for the respondent in that regard.

Whether or not the Chief Land Registrar is non-suited is an academic argument because the decision that he rendered is subject of appeal and whether or not he is named as a respondent does not really have any impact on the decision of the appeal.

Having said so, I find that the appeal lacks any merit whatsoever and it is time to put an end to this protracted dispute. The appeal is accordingly dismissed, but each party shall bear their own cost. Orders accordingly.

Dated, signed and delivered at Nairobi this 20th day of September, 2010.

1. MBOGHOLI MSAGHA

JUDGE