



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 173 OF 1986**

M.M SAPRA.....PLAINTIFF  
VERSUS  
S.C. SAPRA.....DEFENDANT

**RULING**

This dispute involves two brothers. The plaintiff is said to be deceased. Sometime in 1996 the parties agreed before the High Court to mandate the Senior Deputy Registrar to visit the premises and make a report that would facilitate the resolution of the disputes between the two brothers which was about an access road.

The Deputy Registrar duly visited the premises and made a report which is now a subject of two applications before me. There is an application by the plaintiff under Order XXVII Rule 13,14 and 18 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for orders that the Registrar's ruling regarding the partition of LR.7158/38 Brookside Gardens be confirmed as a decree of this court and the costs be in cause.

There is then an application by the defendant under Order XXVII Rules 14(2)(3) and 20 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for orders that the said ruling be set aside and costs be provided for. The said ruling is dated 27<sup>th</sup> September, 1996.

The Ruling by the learned Senior Deputy Registrar observes at the opening paragraphs as follows;

**“This matter was referred to the Deputy Registrar under Order XXVII Rules 13,and 14 of the Civil Procedure Rules. The parties had entered a consent judgment, my task was therefore to determine the manner in which the subject matter i.e. LR.7158/58 off Grevillia Grove Westlands, could be equitably partitioned”.**

After considering the proposals and submissions of the parties herein, the learned Senior Deputy Registrar concluded;

**“I find the offers by the plaintiff to make good and chip in towards the demolition and construction most reasonable, and therefore I enter judgment in terms of proposal ‘C’. The counsel to work out the details of compensation and contribution by the plaintiff to the defendant. The said details be filed in court and both parties be at liberty to apply in case of any predicament.”**

I have gone through submissions by counsel herein alongside the affidavits sworn by the parties. If I were to set aside the said ruling I would reverse the gains made as a result of the ruling or report filed by the Senior Deputy Registrar. I note that before the plaintiff filed the application to confirm the ruling of the Deputy Registrar, steps had been taken to obtain approvals both from the City Council of Nairobi and the Commissioner of Lands, in respect of the mode and dimensions of the partitions, which approvals were granted. It has not been alleged by the defendant that the said approvals were misplaced or based on facts or material not relevant to the subject matter. It is also on record that the approvals were inconformity with the planning and regulations of both the City Council of Nairobi and the Commissioner of Lands.

If I were to set aside the ruling at this stage there is no assurance whatsoever that, the Council or the Commissioner of Lands will come up with a different position in respect of what has already been endorsed or approved. I am of the view that if I were to set aside the said ruling, this will be prejudicial in fact to both parties and in any case, this has been overtaken by events in view of what I have said above.

It has not been alleged there was any misrepresentation or fraud or mistake on the part of either the plaintiff, the City Council or the Commissioner of Lands. The parties should now move forward and put this matter to rest in line with the ruling of the Senior Deputy Registrar.

Accordingly, the application by the defendant dated 20<sup>th</sup> May, 2002 seeking to set aside the ruling by the Senior Deputy Registrar is hereby dismissed. On the other hand, the application by the plaintiff dated 30<sup>th</sup> April, 2002 seeking to confirm the said ruling as the decree of this court is hereby allowed. Considering the positions of the two litigants herein each party shall bear his own costs. Orders accordingly.

***Dated, signed and delivered at Nairobi this 26<sup>th</sup> day of October, 2010.***

**A. MBOGHOLI MSAGHA**

**JUDGE**