

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 90 of 1987

JULIUS MUCHIRA NGUU..... APPELLANT

Versus

ELIZABETH MUTHONI 1st DEFENDANT

MOSES WAMWATI MURIUKI (DCD).. 2ND DEFENDANT

CHUBI NGUU.....3RD DEFENDANT

JAMES MAINA.....4th DEFENDANT

RULING

Pursuant to the provisions of S. 133(1) of the Registered Land Act, the 4th Defendant took out the motion dated 14th November 2008 in which he applied for the cautions lodged by the Plaintiff over the parcel of land known as Inoi/Kerugoya/798 – 802 to be lifted. The motion is supported by the affidavit of James Maina sworn on 14th November 2008. The Plaintiff opposed the motion by filing a replying affidavit he swore on 29th January 2009.

When the motion came up for interpartes hearing Miss Thungu, learned advocate, for Mr. James Maina, the Applicant herein, urged this court to grant the orders. She pointed out that the cautions were lodged on 19th March 1987 to last until this suit is heard and determined. It is said the suit has since then been dismissed hence the cautions should be removed. Mr. Mahan, learned advocate for the Plaintiff urged this court to dismiss the motion because the suit is still pending, in that the Plaintiff has filed a notice of Appeal against the dismissal order hence the suit is not yet concluded. It is also argued that the Applicant has no locus standi to file the application.

I have considered the oral arguments presented by learned advocates. I have also considered the material placed before me. It is not in dispute that the cautions complained of were registered on 19th March 1987. The same were to remain until this suit is heard and determined. This suit was dismissed on 29th June 2001. An application to set aside the dismissal order was also dismissed on 22nd October 2008. The Applicant has filed a notice of appeal in which he intends to challenge the dismissal order in the court of Appeal. Miss Thungu has urged this court to find that the Plaintiff has not filed the substantive appeal hence there is no appeal. There is no doubt the Applicant has filed a notice of appeal. That notice has not been withdrawn nor struck out. In such a case I find that this suit has not been effectually concluded in view of the pendency of the appeal courtesy of the notice of Appeal. Since the Pendency of the caution is dependent on the existence of this suit, then there is no merit in the motion. The same is ordered dismissed with costs to the Respondent/Plaintiff.

Dated and delivered this 29th day of July 2009.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Nderi H/B

Mahan for Respondent.

N/A Thungu for Applicant.

J.K. SERGON

JUDGE