



REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL CASE 7 OF 2004

JOSPHAT NGANGA.....APPELLANT

AND

PAUL KAMANDE GICHEHA.....1ST RESPONDENT

GRACE NJERI.....2ND RESPONDENT

(Being an appeal from original judgment in R. M. Civil Case No. 635 of 1999 of resident Magistrate’s Court at Thika – Betty Rashid Principal Magistrate dated 14th day of August 2002)

PAUL KAMANDE GICHEHA.....PLAINTIFF

GRACE NJERI.....PLAINTIFF

Versus

JOSPHAT NGANGA.....DEFENDANT

JUDGMENT

The Respondents sued the Appellant in the lower court for vacant possession of **Plot No. 10 and 13 NDULA** and the removal of commercial building constructed thereon. In his defence the Appellant averred that he began to live in Ndula Market in 1970 when he was allocated and that it was after balloting was done in 1994 he was given an allocation letter for Plot No. 20. He complained to District Commissioner of Thika who said that the original resident were to remain where they were regardless of the number reflected in the allocation letter. At the trial the Plaintiffs/Respondents in this appeal, gave evidence on their ownership of Plot No. 10 and 13. They produced allocation letters for those plots written by Kiambu County Council. They also called a witness at surveyor at Thika County Council. This witness confirmed the Respondent’s ownership of those two plots. This witness also stated the Appellant, was allocated Plot No. 20. He produced a map which indicated where Plot No. 10 and 13 were and also where Plot No. 20 was. He confirmed that he pointed out Plot No. 20 to the Appellant.

The trial court in its judgment found in favour of the Respondent and that finding aggrieved the Appellant who has filed the present appeal. The Appellant has preferred the following grounds of appeal:

- 1. The learned Magistrate erred in law in failing to consider that the Appellant was 1st Allottee by Kiambu County Council of Plot No. 20 but after Thika Country Council took over Ndula Market Plot No. 20 was given new numbers thus Plots Nos. 10 and 13.**
- 2. The learned Magistrate erred in failing to consider that the allocation of Plot Nos. 10 and 13 was**

wrongfully done because they were allocated on the Appellant's Plot and the Appellant was in possession and occupation of the said plot since the year 1971 and the Appellant had already developed and constructed a permanent stone building onto the said plot.

3. The learned Magistrate erred in law and in fact in failing to consider that the Appellant had already developed the Plot and was in possession and occupation of the Plot ever since the year 1971 and the Appellant was entitled to the said Plot.

4. The learned Magistrate erred in law in failing to consider that although the official letter of Allotment was issued to the Appellant on 21st day of June 1994 by Kiambu County Council the Appellant was in possession and occupation of the said plot ever since the year 1971.

5. The learned Magistrate erred in law and misdirected herself in holding that the Plot belongs to the Respondents and not to the Appellant.

6. The learned magistrate erred in law and in fact in holding that the Appellant should remove his buildings while he was on that Plot since the year 1971.

7. The learned Magistrate erred in law and in fact in failing to consider by removing the buildings the Appellant will suffer and continue to suffer great loss and damage.

8. The learned Magistrate erred in law in her evaluation of the evidence and the judgment is against the weight of the evidence.

9. The learned Magistrate erred in not writing a clear judgment.

10. The learned Magistrate did not exercise her discretion properly.

It is clear that the grounds raise issues that were not canvassed at the trial. For example the Appellant did not prove that he was in occupation of Plot No. 10 and 13 prior to the same being allocated to the Respondents. There was no documentary proof of the same. In submissions in support of the appeal, Appellant's counsel criticized the lower court's judgment for what counsel said was failure to consider the evidence presented by the parties. Counsel also stated that, that judgment did not consider the pleadings. Counsel stated that since the judgment failed to meet the standards of *Order XX Rule 4* of the Civil Procedure Rules that the appeal be allowed as prayed and that the case be re-heard by the lower court. The Respondent's Counsel was of the view that the lower court considered the evidence tendered in its judgment. *Order XX Rule 4* provides:

“Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

I have considered the short judgment of the lower court and I have also considered the evidence tendered by the parties. The judgment of the lower court, even though it is short it cannot be faulted with regard to the requirements of the Civil Procedure *Rule 4 of Order XX*. The same indicated the issue before it that is the dispute of ownership of Plots No. 10 and 13. The judgment considered the evidence presented by the Respondents and their witness. It also considered the evidence of the Appellant together with the exhibits of all the parties. I find I cannot fault that judgment in its form. Further I find that the judgment paid due regard to the evidence presented by the parties. Accordingly I find that the Appellant's appeal fails and the same is dismissed with costs to the Respondents.

Dated and delivered at Nyeri this 29th day of June 2007.

MARY KASANGO

JUDGE