



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 390 of 1992

GERISHON MUINDI BARUTHI KIBUNDI PLAINTIFF

VERSUS

WILLYS GATINKU MUKOBWADEFENDANT

RULING

The Court of Appeal in its judgment dated and delivered on 2nd July, 1999 awarded to the applicant herein 5.58 acres of Parcel No.1414 and 3.48 acres of Parcel No.1415 (the suit lands) by virtue of his adverse possession of the two parcels.

It would appear from the record that as the Court of Appeal judgment was pending the suit lands were subdivided. After the Court of Appeal judgment the subdivided parcels were transferred, prompting the applicant to bring an application on 23rd March, 2001 seeking to join to the suit the transferees of the new parcels. He also sought that the sub-divisions and transfers be cancelled; that inhibition order from any dealing with the new parcels be issued; that 5.58 acres from parcel No.1414 and 3.48 acres from parcel No.1415, be transferred to him; and that the Executive Officer/Deputy Registrar to be empowered to sign all documents to effect sub-division and transfer. There was also a prayer for costs.

On 17th December, 2002, Mulwa, J granted orders in terms of prayers (f), (g), (h), (i), and (j) of the application, canceling the subdivision of parcel No.1414 and the transfer of the subdivided parcels. He order that 5.58 acres of Parcel No.1414 and 3.48 acres of Parcel No.1415 be transferred to the applicant, and further directing the Executive Officer/Deputy Registrar to sign all documents to effect sub-division and transfer of the two parcels to the applicant and costs.

On 23rd May, 2003 the applicant brought the present application in which he is seeking that;

1. The District Land Registrar do dispense with the title deeds in respect of L.R Nos.Karingani/Ndagani/3845-3860 (inclusive) and Karingani/Ndagani 1414 and 1415 for purposes of fully implementing the orders of this court dated 17.12.2002 and extracted from the registry on 31.1.2003.
2. The title deeds, if any, currently held by all the 14 respondents herein in respect of the said L.R. Nos Karingani/Ndagani/3845-3860 (inclusive) and Karingani/Ndagani/1414 and 1415 be declared invalid, null and void.
3. The order herein be served upon the District Land Registrar, Meru South District for compliance.

4. Costs be provided for”

The grounds upon which the application were based are that execution of the orders dated 17th December, 2002 has been frustrated by refusal of the respondents to surrender the current title deeds in respect of the suit lands. As a result the registrar has declined to exercise his powers to dispense with the title deeds without a court order.

It is also worth-noting that subsequent upon the applicant making this application the 1st respondent made an application dated 16th September, 2003 for the review of the orders of 17th December, 2002. That application was marked S.O.G (Stood Over Generally) on the ground that the respondent intended to appeal against the order in question.

The present application is expressed to be brought under Section 33(1) of the Registered Land Act, Cap 300, which stipulates;

“33.(1) If a title deed or certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the title deed or the certificate shows all subsisting entries in the register, a note of the registration shall be made on the title deed or certificate”

It is the duty of the Registrar, if requested by a proprietor of land to issue to the proprietor a title deed. The Court of Appeal having awarded to the applicant the two parcels of land and the High Court (Mulwa, J) having cancelled the subsequent sub-divisions and the resultant transfers, and if the necessary documents have been executed by the Deputy Registrar/Executive Officer, then it remained for the Registrar to ensure that the titles relating to the suit lands are produced if not filed in the registry.

It is only the Registrar, under Section 8(a) of the Registered Land Act, who has the power to require any person to produce any instrument (defined in Section 3 to include a deed).

It is the applicant’s contention that the Registrar has been unwilling to exercise his discretion to dispense with the title deeds without an order of court directing him to do so. Clearly the orders sought in this application are directed to the Registrar. Orders issued to by both the Court of Appeal and this court (Mulwa,J) are very clear.

If both have been served upon the Registrar and he is unwilling to do what he is required to do in the circumstances of this case, then the applicants recourse will be against the Registrar.

To that extend, and with respect, I agree with counsel for the respondent that this application ought to have been by way of judicial review to compel the Registrar to do his work. The first prayer in this application must fail. The second prayer is superfluous by reason that Mulwa, J had declared the new titles void and invalid by canceling them and transferring the suit lands to the applicant.

The application is, on those grounds, dismissed with no orders as to costs.

DATED AND DELIVERED AT MERU THIS 8TH DAY OF JUNE 2007

W. OUKO

JUDGE