

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 547 of 2002

JOYCE WANGECI KIBOI..... PLAINTIFF/APPLICANT

VERSUS

JECINTA MUTHONI MBURU.....1ST DEFENDANT/RESPONDENT

JOHNSON MBURU KURIA..... 2ND DEFENDANT/RESPONDENT

RULING

Having filed H.C.C.C. No. 547 of 2002 by a Plaint dated 12th April 2002, the Plaintiff/Applicant then filed a Chamber Summons application dated 12th April 2002 seeking restraining orders against the Defendant/Respondents in respect of a disputed parcel of land known as KIAMBU/MUNICIPALITY BLOCK 5 (KIAMUMBI) 337. The details of the said application are not material to the present application and need not be considered. By a Chamber Summons dated 7th January 2003 the Defendants sought to have the Plaintiff's injunction application dismissed for want of prosecution. However on 7th May 2003 a consent was recorded before the Honourable Lady Justice Aluoch wherein the above two applications were withdrawn and an order made that the main suit be set down for hearing within 90 days, failing which the same would stand dismissed. Appearing for the Applicant on that day Mr. Khamati and for the Respondents was Mr. Ongondi. No step was taken towards setting the matter down for hearing within the said period. Sometime in January 2004 the Plaintiff's advocate received communication from the Court to the effect that Certified Copies of Proceedings requested for by the Defendant's advocate were ready for collection, which communication aroused the curiosity of the Plaintiff's advocate regarding the matter. It is then that the Plaintiff's advocates became aware of the consent order recorded on 7th May 2003. The Applicant now seeks to have the said consent order set aside for reasons that the same was recorded without her instructions and/or knowledge and that the Counsel then appearing for the Defendants Mr. Philip O. Ongondi had no practicing certificate.

Worse still, the said advocate, practicing alone under the name Ongondi & Co. Advocates had not been enrolled to practice. In the supporting affidavit to this application, Counsel on record for the Applicant at the material time also depones to the fact that he has no recollection of having instructed Mr. Khamati to hold his brief in the recording of the consent order despite a non authenticated hand-written note a copy of which was produced herein as annexure JMK1 to the Respondent's Replying Affidavit.

Annexures "GG 5(c) and "GG5d" are proof that the names Philip O. Ongondi and Ongondi & Co. Advocates were unknown to the Law Society of Kenya and did not appear in the records of the Society as at 12th February 2004. As such it follows that any legal representation purported to have been undertaken by them on behalf of the Defendants/Respondents herein was in contravention of the Advocates Act and illegal. An illegality cannot give rise to any rights under the law. Therefore, the consent purportedly entered herein on 7th May 2003 by Mr. Ongondi on one side and Mr. Khamati on the other has no binding effect for reason for the illegality. I do agree with the Applicant herein that the same is null and void. For that reason I allow this application in terms of prayer 1 and do hereby set aside the consent order of 7th May 2003 with the result that the suit herein remains undisturbed save for the time lost by virtue of the said consent order.

As M/S Mbai & Associates are now on record for the Defendants the Applicant will henceforth deal with them regarding the service of Court process and the pursuit of the Chamber Summons dated 5th December 2005 which the Plaintiff is at liberty to fix for hearing on a date to be taken at the Registry.

Status Quo to maintain until further orders of the Court. Orders accordingly with costs in the cause.

Dated and delivered at Nairobi this 28th day of April, 2006

M.G. Mugo

Judge

In the presence of

Joyce W. Kiboi applicant in person

N/A for the respondents