

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 526 of 1993

WAMBUI KARIUKI.....PLAINTIFF

VERSUS

KAMAU MWANGI.....DEFENDANT

RULING

The Application before me is for the staying of execution of a decree issued herein pursuant to an interlocutory judgment entered on 26th September 2000 and a final judgment entered on 19th December 2000 which two judgments the applicant seeks to have set aside along with all other consequential orders pursuant thereto.

The grounds in support of the application are that the Plaintiff was mentally sick when the said judgments were entered against her and that her family would be rendered homeless and destitute if the status of affairs is not altered by the setting aside of the said orders. The application is brought by the Plaintiff's son having obtained a management order over the Plaintiff's affairs on 21st January 2005.

I have heard submissions by counsel on both sides. I have also perused the record and noted that the judgment of 26th September 2000 was entered upon a successful application by the Respondents herein that the Plaintiffs suit be dismissed for non-attendance at the hearing whose date had been taken in Court by consent of both parties. The court recorded the reasons for granting the application and ordered that the suit proceeds for the hearing of the Respondent's counterclaim. When the matter came for the hearing of the Counter Claim the Plaintiff did not raise any objection to the entering of the judgment. She did not apply for the setting aside of the same at the time either. The record shows that the Applicant participated in the proceedings in person after requesting and being granted several opportunities to instruct counsel. The proceedings and all the rights of the plaintiff were explained by the court at every stage and the Plaintiff took full advantage of the opportunities availed to her by the court. The recorded proceedings show that she understood what was going on and even conducted a full cross examination of the witnesses during the proceedings before Justice Rawal between 7th June 2000 and 19th December 2000 when the final judgment was pronounced.

Although the medical records availed before me show that the Plaintiff was admitted into a mental institution sometime in 1987 and again in 1994 there is nothing to suggest that she was under any disability at the time of the hearing. The record suggests the contrary. That she did resume treatment for mental illness in the year 2003 is no reason to suggest that she must have been insane at the time the suit was heard and judgment entered. Were it the case then one would have expected that the Applicant herein would have made his application at that time or not over four years after the proceedings were closed.

I am not inclined to allow the application which appears to be an afterthought on the part of the applicant.

The same is hereby dismissed with no order as to costs.

Dated and Delivered at Nairobi this 23rd day of June 2006

M. G. MUGO

JUDGE

Delivered in the presence of

Ms Kirungumi holding brief for Gichugi for Applicant

Mrs Kinuthia for Respondent