



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Civil Appeal 32 of 1998

MUCHEKE M'ANARI.....
.....APPELLANT

V E R S U S

E. MWEBIA M'ATUGI.....
RESPONDENT

JUDGMENT

1. In his Memorandum of Appeal filed on 16.6.1998 the Appellants set out their grounds of Appeal as being that:

- (i) The learned Resident Magistrate erred in law and fact in enforcing a land agreement which was null and void, ab initio.
- (ii) The Learned Resident Magistrate erred in law and in fact in disregarding the decision of the Mweru II Adjudication Officer made on 8.5.1992 requiring the Respondent to give the 2nd Appellant 0.40 acres from land parcel No. 184 Mweru II Adjudication section, and from which decision the respondent had not appealed against.
- (iii) The learned Resident Magistrate erred in law and fact in holding that the land in dispute had been solely and exclusively developed by the plaintiff and in disregarding the appellants extensive developments on the same land.
- (iv) The learned Resident Magistrate erred in law and in fact in disregarding that the appellants had been in active and continuous possession of the land since 1980.
- (v) The entire judgment was a misdirection in the law.

2. At the hearing of the Appeal, Mr. Riungu learned advocate for the Appellants abandoned grounds 1,2,3 and 4 and argued ground 5 only.

3. Mr. Riungu's argument on the one ground left standing was very simple; that the dispute before the subordinate court related to ownership of land within an Adjudication Section, to wit Mweru II Adjudication Section and that being the case, the subordinate court had no jurisdiction to determine the dispute in view of the provisions of s.30 of the Land Adjudication Act and non-compliance with s.29 of the same Act.

4. To Address that one issue, s.29 and s.30 of the Land Adjudication Act, Cap 284 provide as follows:-

s.29 (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by-

(a) Delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) Sending a copy of the appeal to the Director of Land Adjudication,

and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

2. The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.

3. When all the appeals have been determined, the Director of Land Adjudication shall-

(a) Alter the duplicate adjudication register to conform with the determinations; and

(b) Certify on the duplicate adjudication register that it has become final in all respects and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

30 (1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.

(2) Where any such proceedings were begun before the publication of the notice under section 5 of this act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.

3. Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or subsection (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.

4. The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.

5. A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.

6. Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown".

4. Mr. Riungu's argument was that the Respondent should have pursued the appellant procedure set out under s.29 above and not taken out Civil Proceedings without the consent of the adjudication officer in writing under s.30 of the Act. That because no such consent was produced before the suit was instituted, the subordinate court had no jurisdiction and all the proceedings before it were a nullity and the Appeal for that reason ought to be allowed.

5. I would agree with Mr. Riungu that the law as he has cited is correct but applying the facts to that law, then I would agree with Mr. Mwanzia for the Respondent that the Appeal became hopeless the moment only ground 5 of the memorandum of Appeal was argued. The reason for this, like the argument for the Appellant is again very simple;

Consent under s.30 aforesaid was indeed obtained in writing. P.Exh.4 that was produced before the trial court and which appears in the evidence of the Respondent at page 10 of the records of Appeal was the original consent letter to institute civil proceedings and the learned trial magistrate in his judgment confirmed this fact when he stated as follows (page 18 of the record);

“ Having given consent to the Plaintiff to go to court which was exhibited, the Plaintiff did not need to go to appeal against the Land Adjudication Officer’s decision as argued by learned counsel for the 1st and 2nd defendants, Mr. Gikunda Miriti Advocate.”

6. This being the fact the argument on Appeal that no consent was given to file the suit cannot be sustained and the Appeal must as a consequence fail. Perhaps Mr. Riungu ought to have reconsidered the consequences of his approach to the Appeal. Once he did not the Appeal tumbled.

7. The sole ground of Appeal argued having failed to impress, then the Appeal is hereby dismissed with costs to the Respondent.

8. Orders accordingly.

DATED, DELIVERED AND SIGNED THIS 26TH DAY OF SEPTEMBER 2006

ISAAC LENAOLA

JUDGE

In the presence of

Mr. Riungu Advocate for the Appellant

Mr. Mwanzia (absent) Advocate for the Respondent

ISAAC LENAOLA

JUDGE