

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET
CIVIL APPEAL NO.152 OF 1993

SAMUEL NDURA KANYARA APPELLANT

VERSUS

MARY NJAMBI KARIUKI RESPONDENT

RULING

This is an application by way of Chamber Summons filed by the applicant Samuel Ndura Kanyara in person, as he is not represented by counsel. The application is brought under Rule 4 Civil Procedure Rules and Section 79B and 75 of the Civil Procedure Act. The application is for extension of time for leave to file appeal against the judgement of the Resident Magistrate (M. A. Opondo) dated 30th November, 1993. The application which is dated 19th August, 2003 is supported by an affidavit dated the same date sworn by the applicant, Samuel Ndura Kanyara. The application is contested by the respondent Mary Njambi, who filed a replying affidavit dated 15th October, 2003.

In his submissions to the court the applicant did not refer to the grounds of the application and affidavit. Instead he made long submissions on the amount of money he paid to the respondent for purchase of land and the size of the land that he bought with that amount of money. He stated that he paid Kshs.30,000/= to the respondent for purchase of land, but the respondent had on a number of occasions denied having been paid the amount. He also submitted that he had bought 12 ½ hectares of land from the respondent, but the respondent had on various occasions stated that the land purchased was much smaller than that size.

Counsel for respondent Mr. Njuguna submitted that the application of the applicant was incompetent. He urged the court to ignore the submissions of the applicant which were outside the issues stated in the application. Mr. Njuguna submitted that wrong sections of the Civil Procedure Act were used by the applicant. The application was for leave to appeal against the judgement of the Resident Magistrate delivered on 30th November, 1993. That judgement was appealed from to the High Court in December, 1993 and the appeal was rejected. Subsequently an appeal was filed in the Court of Appeal as Appeal No.152/1995 and the appeal was struck out on 23rd September, 1996. Applicant sought leave to file an appeal and he was granted leave and filed an appeal in the Court of Appeal No.215 of 1999 which was heard at Nakuru and was struck out. Thereafter the applicant went to the Land Tribunal in Arbitration Case No. 14 of 2002 and award was made which found that the applicant was sold 1/3 of an acre and he has title to that land.

This matter having started at the Resident Magistrate's Court and an appeal on same determined by the Court of Appeal, which is the highest court in the land, I find it strange that it should come to the High Court after the Court of Appeal has made a decision. The applicant has made verbal submissions which are irrelevant to the application and I ignore them. The application under Chamber Summons dated 19th August, 2003 asks me to grant leave to appeal from the decision of the Resident Magistrate made in 1993. An appeal on the same matter has been determined by the High Court and Court of Appeal. I therefore cannot entertain this application and consequently dismiss it. The applicant will pay the costs of the respondent in this application.

It is so ordered.

Delivered and Dated at Eldoret this Day of 2004

George Dulu

Judge

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I certify this a true copy of the Original

DEPUTY REGISTRAR