



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL SUIT NO. 22 OF 2001

STEPHEN KIPROTICH SEIMO.....PLAINTIFF

VERSUS

ALEXANDER K. NGETICH.....DEFENDANT

RULING

The application has been brought through chamber summons under Orders XXXIX R. 4 & 9, IX B Rules 8, XXI R. 22, IX R. 1 & 2 of the Civil Procedure Rules and Sec. 3 and 3

(a) of the Civil Procedure Act. The application seeks the following orders:

(a) That pending the hearing and disposal of this application, execution of the orders of the Court made on 8th March, 2001 and all consequential orders be stayed.

(b) That the orders of the Court made on 8th March, 2001 and all other orders subsequent thereto be set aside on such terms as the Court shall find expedient to impose.

(c) *That Nakuru Civil Suit No. 22 of 2001 and Nakuru Civil Suit No. 502 of 1999 be consolidated as a common question of law and fact exists in both suits.*

The grounds of the application are the following:

(i) The Plaintiff in this Suit and the plaintiff in Nakuru HCCC No. 502 of 1999 are trying to use the Court process to swindle the applicant of a piece of land rightfully occupied by him.

(ii) That the said swindle may not be discernible unless both suits are heard together.

(iii) That the applicant's previous advocate failed to file a replying affidavit and grounds of opposition and it would not be fair to punish the applicant for his Advocate's incompetence.

(iv) That the applicant has a well merited defence as can be discerned from his affidavit and proposed defence.

(v) That the application dated 26th January, 2001 tended to dispose of the suit without trial and the defendant is thereby greatly prejudiced.

(vi) That the Plaintiff is in the process of having the defendant evicted from the premises.

This Court has carefully perused the detailed submissions by both Counsels on record. From the above, it

is apparent that the orders dated 8th March, 2001 were granted to the plaintiff due to the negligence of the Counsel for the defendant. The latter had failed to file the:

- defence, grounds of opposition or a replying affidavit.

It is a settled principle of law that the mistakes of a Counsel should not be visited on his client. Secondly, this Court has carefully perused the attached defence. It is apparent that the same has raised important triable issues. In addition, it is apparent that the subject matter is land which is a precious commodity in Kenyan society.

Due to the above, it is crucial that each party should be granted a chance to canvass all the issues exhaustively. Apart from the above, it is apparent that the plaintiff/respondent has also been sued in Nakuru HCCC No. 502 of 1999. The applicant's Counsel has ably demonstrated the relationship between the two cases.

Having gone through the two Plaints carefully, I have confirmed the relationship between the two cases. Given the above, it would be in the interest of all the parties if the said cases are consolidated and dealt with simultaneously. In view of the above, I hereby grant the application dated 7th June, 2002. Costs to the applicant in any event.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open Court in the presence of Ms Kerage for Omae for applicant.

MUGA APONDI

JUDGE

24TH FEBRUARY, 2004