



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 469 OF 2002

GATHAIRU MWAURA)

JAMES MWAGANU MWAURA APPELLANTS

NJAMBI MWAURA MWAGANU

VERSUS

PETER WAINAINA RANJI

PENINA NJERI KIARIE RESPONDENTS

TERESIA WATHERI NJENGA

JUDGMENT

In June, 1995 the Respondents (Plaintiffs in the lower court) claiming ownership of onehalf of Plot No 2 Kangangi market, filed an action (Kiambu PMCC No 1541 of 1995) against one Njambi Mwaura Mwaganu requiring her to subdivide the said Plot into two equal shares, and to transfer one such share to them.

In a Judgment handed down September 6, 1996 the lower court (N Ithiga, SRM) found their claim valid and ordered the defendant, Njambi Mwaura Mwaganu, who is the 3rd Appellant in this appeal, to transfer one-half of the suit plot to the 1st Plaintiff and the legal representatives of the 2nd and 3rd Plaintiffs.

That Judgment was not appealed against, and is now final. The three Plaintiffs then attempted to enforce the Judgment by requiring the defendant to execute the necessary documents. The defendant refused to co-operate. The Plaintiffs filed an application by way of Notice of Motion dated 30th April, 2001 for an order that the Executive Officer of the Court be authorized to execute the necessary documents. In that application, however, the Plaintiffs joined two individuals (Gathairu Mwaura and James Mwanganu Mwaura) as the joint Administrators of the Estate of Mwaura Mwaganu, the late husband of the Defendant.

The lower court, in a Ruling handed down on 24th September, 2002 (L Muhiu, RM) allowed the Notice of Motion application dated 30th April, 2001. It is that Ruling that is the subject of this appeal.

In a Memorandum of Appeal dated 23rd August, 2002, the Defendants (now Appellants) have outlined the following three grounds of appeal:

1. The Learned Resident Magistrate erred in law and fact in allowing the 1st and 2 nd appellants

to be joined as Defendants notwithstanding the fact that the trial had been concluded.

2. The Learned Resident Magistrate erred in law and fact in disregarding the fact that the application for notice of motion had been brought under the wrong provisions of the law.

3. The Learned Resident Magistrate erred in law and fact in allowing the Executive Officer Kiambu Law Court to sign documents and other instruments on behalf of 1 st and 2 nd Appellants yet they were not parties in the suit at the trial.

The Appellant, rightly in my view, abandoned Ground 2. The main issue, raised in Grounds 1 and 3 is that the lower court wrongly “allowed” the two administrators to be joined in the suit after the trial had been concluded, and for ordering that documents be signed on their behalf, “yet they were not parties to the suit.” This argument is misconceived and misplaced. First, the lower court did no such thing as “allow” the Appellants to join any parties. There was no such application before the court. Secondly, the lower court was completely within its right and jurisdiction in ordering the Executive Officer to sign documents where the Defendant had failed or neglected to do so.

There was of course no need to have joined the Administrators to the Notice of Motion. It is neither here nor there, rendering their joinder otiose. It caused no prejudice to anyone, at least none that this court can discern.

The application before the Court was simple and straightforward, which the Appellant has unfairly attempted to complicate. The Respondent simply wanted the Executive Officer to be ordered to sign certain documents as per prayer 1 of the application dated 30th April, 2001. The lower court allowed the same. The last line of the Court’s Ruling states: **“I do allow the application dated 30th April, 2001 with costs ...”**

Accordingly, I see no reason to interfere with that Ruling, and hereby dismiss this appeal with costs to the Respondent.

Dated and delivered at Nairobi this 28th day of October, 2004.

ALNASHIR VISRAM

JUDGE