



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 233 OF 2000

DANIEL MIANO NGAREAPPELLANT

VERSUS

MWAURA KAMAURESPONDENT

JUDGMENT

This is another of the messes created by the Provincial Administration and/or Land Registrars.

The appellant applied for a plot from the District Commissioner Kiambu in 1992 and was apparently allocated plot number Escarpment/Kinari Block 1/1760. It was hived off a bigger piece of land known as Escarpment/Kinari Block 1/1433.

On the other hand the respondent made a similar application through the Provincial Commissioner Nyeri in 1996 and was also issued with title to the same land. He took immediate possession thereof.

Later the Land Registry discovered the folly of their action and purported to tell the respondent that it had cancelled his title to the suit plot and asked him to vacate the same in favour of the appellant.

As would be expected, though, the respondent refused to vacate the land and insisted he was the rightful proprietor thereof. This is why the appellant filed a suit in the court of the Senior Principal Magistrate at Kiambu on 17th April 1997 amended on 3rd November 1997 seeking the eviction of the respondent from the suit land.

The matter was placed before a Resident Magistrate (J.G. Kingori) on 31st July 1998 for hearing. It was partly heard on this day; 24th November, 1998, and 23rd April 1999, when parties completed testifying.

The Magistrate wrote his judgment on 9th July 1999 dismissing the suit land. This is why this appeal has been lodged.

The memorandum of appeal lodged in this court on 11th May 2000 lists 5 (five) grounds of appeal; namely that the learned magistrate erred in law in considering and/or otherwise relying too heavily on matters which were neither placed before the court nor otherwise raised or canvassed in court; that he erred in failing to consider that the District Land Registrar Kiambu had already notified the respondent of the cancellation of his title; that he erred in failing to appreciate that the appellant had been issued with the title deed to the land first as opposed to the issuance to the respondent; that he erred in considering extraneous matters which were not before the court much to the prejudice of the appellant and that he failed to consider sufficiently or at all the evidence and appeared to base his decision on other speculation and conjecture.

The appeal was heard in this court on 6th May 2002 wherein counsel for the appellant submitted that the magistrate did not consider the orders sought and that he considered extraneous matters not before the court.

The appellant's counsel referred to the cancellation of the respondent's title by PW2 on 20th August 1996 and said the magistrate did not realize that title had been cancelled.

That the magistrate's judgment cannot stand as it would be against rules of natural justice. He prayed that the appeal be allowed.

For the respondent, his counsel submitted that PW2 had no power to cancel titles. He prayed that the appeal be dismissed. I have heard and recorded submissions of counsel for both parties and perused the lower court record of proceedings and judgment.

The most important evidence in this matter was that of PW2 where he alleged the respondent's title to the land had been cancelled. If that evidence was true, then there is no reason for the respondent to stick to the land because the authority he had to occupy the land had been removed.

But what PW2 simply said he had a letter dated 20.8.96 conveying a message to the respondent that his title had been cancelled. Unfortunately I did not see that letter on the original file and was not able to tell who wrote it.

But evidence of that letter alone is nothing then what it says. It does not become the authority canceling the respondent's title to land known as Escarpment/Kinari/Block 1/1760.

PW2 did not produce to the magistrate evidence in form of the requisite notices to confirm that indeed the respondent's title to Escarpment/Kinari/Block 1/1760 had been cancelled.

This is not a case which should be decided on the basis of who was issued the title earlier than the other or who occupied the land at the time of the title was issued.

Section 27 of the Registered Land Act provides that the Registration of a person as the proprietor of land vests in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

And unless it is shown the respondent has lost the proprietorship of this land or all the rights thereto through a valid cancellation, the onus of which was on the plaintiff, I on my part would find the appellants' action, an intrusion on the respondent's quiet enjoyment of his land. After all, PW2 admitted he has no power to cancel titles.

I dismiss this appeal with no order for costs, though on a different reason than that given by the learned Resident Magistrate.

Delivered and dated this 29th day of May 2002.

D.K.S. AGANYANYA

JUDGE