



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 92 OF 2019

LYDIA CIANJUKI M'RIBU ALIAS

CHARITY CIANJUKI M'RIBU.....APPELLANT

VERSUS

ELIEZAR RIUNGU.....RESPONDENT

(Being an appeal from the ruling of Hon. J. Irura Principal Magistrate's Court at Nkubu, delivered on 26/06/2019 in NKUBU SRM No. 23 of 2018)

JUDGMENT

1. Vide a plaint dated 18.12.2013, the appellant instituted a suit ELC NO. 313 OF 2013 before the Environment and Land Court at Meru which suit was later transferred to Nkubu SRM's court and registered as SRM E&L CASE NO. 23 OF 2018. The plaint was amended on 30/01/2019, where the appellant sought the following orders;

1) *"A declaration that IGOJI/KIANGUA/1444 now subdivided into land parcels IGOJI/KIANGUA/2863,2864, 2865 and 2866 and further into P/NOS 2885-2890 are trust and family land and the plaintiff's legal rights have arisen due to her considerable long time occupation and development thereon and the lands should be transferred to the plaintiff and/or plaintiff and their children.*

2) *An order cancelling all the subdivisions registered in the defendant's names and for the said land parcels to revert into the 1st defendants name.*

3) *Costs of the suit".*

2. The suit was dismissed on 29.1.2019 for want of prosecution prompting the appellant to file an application dated 22.2.2019 seeking reinstatement of the suit. Vide a ruling dated 26/6/2019, the court dismissed the application contending that it did not have jurisdiction as the suit was premised on adverse possession, which claim lies in the High Court.

3. The appellant being aggrieved by the said ruling has appealed to this court on the grounds which I summarize as follows;

1) *That the trial Magistrates erred in holding that the appellant's claim was based on adverse possession.*

2) *The trial magistrate erred in failing to exercise discretion in favour of the appellant.*

4. The appeal was canvassed by way of written submissions of which, only the appellant filed the same. The appellant submitted that her claim was founded on trust and fraud and not adverse possession and that the trial court does indeed have jurisdiction to entertain her claim. She relied on the following authorities,

- **Peter's vs Sunday Post Ltd (1958) EA 424.**

- **Egal Mohamed Osman vs Inspector General of Police & 3 others (2015) eKLR.**

- **Republic vs National Land Commission & 2 others exparte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West) (2018) eKLR.**

- Law Society of Kenya Nairobi Branch vs Malindi Law Society and 6 others [2017]eKLR,

- Patrick Ndegwa Munyua vs Benjamin Kiiru Mwangi & Another (2020) eKLR.

Analysis and determination

5. The question for determination is *whether the trial Magistrates erred in making a finding that she lacked jurisdiction to determine a claim of adverse possession and whether the same court erred in failing to reinstate the suit.*

6. On the issue of jurisdiction, I have keenly looked at the pleadings of the appellant and I am unable to decipher a claim of adverse possession. The fact that the appellant mentioned that she had been in occupation of the suit land for a considerable long time and developed the same does not mean that her claim was anchored on adverse possession. It was therefore improper for the trial court to direct itself to prayers which were never prayed for by the appellant.

7. On whether the order for dismissal ought to have been set aside, I find that the issue was not adequately captured in the ruling of the trial court. This court will therefore evaluate the issue and determine whether the prayers for the reinstatement of the suit are warranted.

8. I have considered the history of the case. The suit though bearing a number **23 of 2018 Nkubu**, it was actually filed way back in **2013**. The matter was mentioned before Judge Njoroge on 19.12.2013 and the next time it was in court was on 25.5.2018. On 11.7.2018, the trial court noted that no action had been taken on the matter from the time the suit was transferred from the High Court on 19.12.2013. Against this finding, the trial court gave directions for parties to comply with order II of civil procedure rules within 30 days otherwise the matter would stand as dismissed. Nothing happened and the suit was eventually dismissed on 29.1.2019.

9. In the case of **Habo Agencies Limited v Wilfred Odhiambo Musingo [2015] eKLR**, cited in **Tana and Athi Rivers Development Authority vs. Jeremiah Kimigho Mwakio & 3 Others (2015) eKLR**, it was held that;

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

10. In exercising its judicial authority this court has a duty to facilitate just and expeditious determination of proceedings. One of the cardinal principles in our Constitution is **“the expeditious delivery of justice”** –See **Article 159 (2) (b)** thereof, which in effect codifies the 17th century maxim **“Justice delayed is justice denied”**. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide.

11. The appellant is the one who initiated the suit but she was missing in action throughout the lifespan of the matter. Even after the expiry of the 30 days as from 11.7.2018, nothing happened until the matter was dismissed. The delay before and after the date of 11.7.2018 is prolonged and inexcusable. **See Mwangi S. Kaimenyi vs Attorney General & another (2014) eKLR.**

12. I find that there were no compelling reasons to warrant reinstatement of the suit despite the erroneous finding of the magistrate that the claim was anchored on adverse possession. In the final analysis, I find that the appeal is not merited. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF MARCH, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 20.1.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE