



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 33 OF 2018

GEOFFREY MWORIA.....APPELLANT

VERSUS

JULIA KANANA M'MBOGORI.....RESPONDENT

(Being an appeal from the Judgment of Honorable H.N Ndung'u

delivered on 1st August 2018 in Meru CMCC o. 216 of 2014)

JUDGMENT

1. The appellant was the plaintiff in the lower court where he instituted the suit vide a plaint dated 25/06/2014 and amended via a court order dated 27/4/2017 seeking judgment against the defendant for removal of caution placed on parcel No. EX-LEWA/SETTLEMENT/441 on 4/3/2014, an injunction restraining the defendant from interfering with the property rights of the plaintiff in the rest of the parcel and costs of the suit.

2. The plaintiff pleaded that he was the registered owner of parcel No. EX-LEWA/SETTLEMENT/441 and the defendant holds a life interest in part of that land, but she unlawfully cautioned the said land.

3. The Defendant in her statement of defence dated 13/07/2015 and amended on 26/07/2017, denied that she unlawfully cautioned parcel No. EX-LEWA/SETTLEMENT/441, averring that, she only cautioned the land to protect her interest in Meru High Court Succession Cause No. 368 of 2005. She also denied that she only has a life interest over the suit land. She claims that plaintiff's registration as the owner of the land was fraudulent.

4. The suit proceeded to hearing and on 01/08/2018 the trial court delivered a judgment where *Plaintiffs claim was dismissed with costs to the defendant.*

5. Aggrieved by the decision of the trial court, the appellant filed his memorandum of appeal on 28/08/2018 raising six (6) grounds claiming that the trial magistrate erred in law;

“In dismissing the appellant’s suit, failing to consider the provisions of Section 24 and 25 of the Land Registration Act, misinterpreting the provisions of Section 73[1] of the Land Registration Act, failing to apply the provisions of Section 8[1] of the Land Control Act and failing to consider the authorities; Maria Ngangi Gwako V Charles Mwenzi Ngangi [2014]eKLR, Samwel Kirubi Njuki V Margaret Wangari Macharia [2014]eKLR”.

6. On 25/11/2019, the parties through their advocates agreed by consent to have the appeal canvassed by way of written submissions. The court gave specific timelines for compliance of which the appellant was supposed to file submissions by 10.1.2020. On 23.6.2020, the court gave fresh directions for parties to file their submissions each side having 30 days. Again there was no compliance. Against this background, the court gave fresh but self-executing orders on 12/10/2020 in the presence of counsel for the appellant, to the effect that the **Appellant had 30 days to file his submissions by 12/11/2020, failure to which the appeal shall stand dismissed.** The appellant then filed his submissions on 14/12/2020 which was outside the directions given by this court. No leave was sought to regularize the documents.

7. A court does not give orders in vain. This appeal stood as dismissed by 13.11.2020. The respondent is awarded the costs of this appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF APRIL, 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 26.1.2021. 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