



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELC APPEAL NO. 21 OF 2020

BETWEEN

SOPHIA NYANDIRI NDICHU

FRANCIS NDICHU KINYANJUI.....APPELLANTS

AND

PRESBYTERIAN CHURCH OF EAST AFRICA (PCEA) MUKINYE PARISH.....RESPONDENT

(Being an appeal from the ruling and order of the Chief Magistrate's Court at Naivasha

(Hon. J Karanja, Senior Principal Magistrate) delivered on 3rd August 2020

in CM Misc. Cause No. 18 of 2019 Sophia Nyandiri Ndichu & Francis Ndichu

Kinyanjui v Presbyterian Church of East Africa (PCEA) Mukinye Parish)

JUDGMENT

1. The appeal traces its roots to Notice of Motion dated 27th September 2019, an application which the appellants filed in the subordinate court.

2. The following orders were sought in the application:

1. THAT the honourable court be and is hereby pleased to order the Land Registrar Nakuru to produce in court the green card of the parcel of the parcel of land known as: GILGIL/KARUNGA BLOCK 5/516 as at 08th July 1993 and the Registry Map Sheet no. 119/4/23 as at 08th July 1993.

2. THAT the honourable court be and is hereby pleased to order the respondent herein to produce in court the copies of the pleadings the respondent filed at the Gilgil Tribunal Panel Court, the copies of process service therein, the proceedings and the judgement therein.

3. THAT the honourable Court be and is hereby pleased to make a finding that the matter filed at the Gilgil Tribunal Panel Court by the respondent herein represented by a J. Kariuki, F.W Wangombe, Wambui Njau and pastor Samuel Waweru (suing on behalf of the P.C.E.A Church Gilgil—the respondent herein) as 1st plaintiff and directors Mukinye Farmers led by Chairman Alex Chege, Mr K. Kamau Committee member, Mr. Mboore and others as 2nd plaintiff is not the same as civil case No. 135 of 1994 between Sophia Nyandiri Ndichu and Pentecostal Church of East Africa(Gilgil Parish) Naivasha Law Courts, and as such does not qualify to be referred to as : Formerly civil case RM/NSA/135 of 1994.

4. THAT the honourable court be and is hereby pleased to make a finding that the matter filed at the Gilgil Tribunal Panel Court by the respondent herein represented by a J. Kariuki, F.W Wangombe, Wambui Njau and pastor Samuel Waweru (suing on behalf of the P.C.E.A Church Gilgil – the respondent herein) as 1st plaintiff and directors Mukinye farmers led by chairman Alex Chege, Mr K.Kamau Committee member, Mr Mboore and others as 2nd plaintiff was filed, heard, and determined without the input of the applicants herein namely Sophia Nyandiri Ndichu who was the registered owner of the parcel of land known as Gilgil/Karunga Block 5/516 as at 1993 nor the input of the husband Mr. Francis Ndichu Kinyanjui.

5. THAT the honourable court be and is hereby pleased to order the reconstruction of court file number civil case. 135 of 1994 and further a hearing of the same to its logical conclusion.

6. THAT the honourable court be and is hereby pleased to order that pending the reconstruction of court file number civil case. 135 of 1994 and hearing of the same to its logical conclusion, it is hereby pleased to order a stay of any transfer or sale of the parcel of land known as Gilgil/Karunga Block 5/516.

7. THAT the cost of this application be borne by the respondent.

3. Upon hearing the application, Hon. J Karanja, Senior Principal Magistrate, delivered a ruling on 3rd August 2020 and dismissed the application. Dissatisfied with the outcome, the appellants filed this appeal through Memorandum of Appeal dated 13th August 2020. Subsequently, they filed Amended Memorandum of Appeal dated 24th October 2020.

4. The following are the grounds of appeal as listed on the face of the amended memorandum of appeal:

1. [Description of the appellants]

2. [Description of the respondent]

3. That the appellants aver that the learned trial magistrate erred in law and in facts in dismissing their miscellaneous application while all evidence, and exhibits adduced both by the appellants and the respondents were express in demonstrating that there was and there is a cause to grant the orders sought by the appellants as such would protect their right to information, information only held by the respondents.

4. That the appellants aver that the learned magistrate erred in law and in facts in dismissing their miscellaneous application by relying on a copy purported to be the Gilgil Land Tribunal proceedings when on the face of it lacks fundamental information such as: Case Number, the court or tribunal the matter was done and the parties mentioned are different to those in Naivasha Chief Magistrate's case No. 135 of 1994 despite claiming to be "formerly 135 of 1994", still the purported proceedings has hand corrections giving it the hallmarks of a forgery, and that a letter dated 23rd day of March, 2011 purported to be "registration of instrument" addressed no one, does not indicate its origin, but claiming to give authority to dispense with the appellants title deed.

5. That the appellants aver that the learned trial magistrate erred in law and facts in dismissing their miscellaneous application because the said application isn't seeking to argue or canvas the material evidences, or attempting to have the subject matter which is parcel of land known as: Gilgil/Karunga Block 5/516 reverting to the appellant, but was only seeking the right of access to information held by the respondents herein so as the appellant be able to protect their constitutional right of ownership of property.

6. That the appellants aver that the learned trial magistrate erred in law and in facts in dismissing their miscellaneous application when the appellants submission was strenuously elaborate in exposing to the trial magistrate the constitutional basis in making such an application in the first place.

7. That the appellants are aggrieved by the judgment ruling of the learned trial magistrate and so appeals against it.

8. That this honourable court's jurisdiction is admitted.

5. On the basis of those grounds, the appellants urged the court to set aside the ruling and to allow their Notice of Motion dated 27th September 2019 with costs.

6. The appeal was canvassed through written submissions. The appellants in their submissions reiterated the grounds of appeal on the face of the amended memorandum of appeal and submitted that they are the original owners of the suit property since it was surveyed and a title deed issued on 8th July, 1993. That Sophia Nyandiri Ndichu has been the registered owner of the suit property until sometime in 2012 when a search at the land registry showed that the land was now registered in the name of Presbyterian Foundation. They concluded their submissions by praying that the appeal be allowed with costs.

7. The respondent in its submissions argued that the orders sought in miscellaneous application number 18 of 2019 could not be granted by way of miscellaneous application and that the same orders had been sought in High Court case No. 173 of 2012 where they were declined. That the issues raised in the miscellaneous application were not raised by way of appeal or reviewed when the matter was before the high court. It then prayed that the appeal be dismissed with costs to the respondent.

8. I have considered the appeal and the parties' respective submissions. The matter before the subordinate court was a miscellaneous cause commenced by way of Notice of Motion dated 27th September 2019. Thus, the ruling appealed against was a final determination of the cause.

9. This is a first appeal. Consequently, the mandate of this court is to re-evaluate, re-assess and re-analyse the record and then determine whether the conclusions reached by the learned magistrate are to stand or not and give reasons either way.

10. From the material on record, it is apparent that the appellants concede that proceedings were commenced against them before the Gilgil Land Dispute Tribunal in connection with Gilgil/Karunga Block 5/516 and that the tribunal rendered a decision on in on 2nd October, 2002.

The said decision was adopted on 5th February 2003 and a judgment issued in Naivasha SPM Misc. Application No. 23 of 2002. Subsequently, the same court issued an order on 17th February 2011 empowering the executive officer of the court to execute all necessary documents to facilitate transfer of the property to the Presbyterian Church of East Africa (P.C.E.A). It has not been suggested that tribunal's decision and the judgment of the subordinate court were ever set aside. If anything, all of the appellants' efforts so far to set those decisions aside have failed. Among those attempts is Nakuru ELC No. 173 of 2012 where the appellants' application as well as the entire suit were dismissed on 22nd February 2013.

11. The appellants have argued that Notice of Motion dated 27th September 2019 was not aimed at relitigating the issues but only to pursue a right of access of information held by the respondent under Article 35 of the constitution. Suffice it to state that issues of access to information in the context of material that parties placed before a court or tribunal could only be pursued within those particular proceedings. The appellants cannot seek to re-open the proceedings in a new miscellaneous cause under the guise of seeking to access information.

12. A perusal of the prayers in the application reveals that contrary to their claims that they were only seeking access to information, the appellants were intent on such substantive orders as declarations concerning identities of previous proceedings in the other matters already referred to, reconstruction of case files in those other matters as well as stay of execution of the judgments in those matters. Clearly, such orders could not issue to the appellants. The learned magistrate cannot be faulted in dismissing the application.

13. In view of the foregoing discourse, this appeal is devoid of merit. I dismiss it. I note that the learned magistrate spared the appellants the sting of costs. There is need to bring an end to litigation on the issues raised in this appeal. Costs may be a useful consideration in that regard. The respondent shall have costs of this appeal.

Dated, signed and delivered at Nakuru this 24th day of June 2021.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the appellants

Ms Kimure holding brief for Mr Ikua for the respondent

Court Assistants: B. Jelimo & J. Lotkomo