



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 120 OF 2010

HARUN MUTHOMI APPELLANT

Versus

NICHOLAS MURIUNGI KINOTI1ST RESPONDENT

BEATRICE GACHERI2ND RESPONDENT

GEOFFREY KOOME KINOTI3RD RESPONDENT

REBECCA KENDI (for and on behalf of

KENNETH MUTHAURA4TH RESPONDENT

RULING

[1] I have organized over this appeal. Of importance, this appeal and another namely Meru HCCA NO 145 of 2010 are related. They rotate around same subject matter, i.e. motor vehicle registration Number KAG 945F. At one point, that is on 25th April 2013 Makau J directed Deputy Registrar to avail Meru HCCA No. 145 of 2010 *for consideration of consolidation with this appeal*. Were these matters consolidated? Although the words “consolidation” or “consolidated” were not used, I can see directions by Lesiit J made on 10th October, 2011 to the effect that Appeal No. 145 of 2010 be heard together with Civil Appeal No. 120 of 2010 on 24th October, 2011. The said judge also directed *Parties to file submission to be highlighted by each party*. Again, I can see that Makau J ordered a consolidation of applications dated 12th October, 2010 and 15th December, 2010 on 24th October, 2011: these applications were for stay of execution. From the record, Appeal No 120 of 2010 was prepared for hearing and eventually was canvassed by way of written submissions. Parties filed their respective submissions on Appeal No 120 of 2010. Although the file for appeal no. 145 of 2010 is physically fastened to No. 120 of 2010, the former appeal was not prepared for hearing at all and no submissions were filed in respect of that appeal. The only substantive submissions in relation to Appeal No. 145 of 2010 are on the application for stay of execution. The 1st Respondent, however, made reference to Appeal No 145 of 2010 in his submissions filed in Appeal No 120 of 2010 to the effect that the result of the appeal No. 145 of 2010 will invariably affect appeal no. 120 of 2010. The terse statement in the opening paragraph of the submissions filed in appeal no. 120 of 2010 read;

“...that this appeal is dependent on the outcome of HCCA NO.145 of 2010”.

Except that submission, parties did not address themselves on Appeal No. 145 of 2010.

[2] I am aware the major arguments in Appeal No 120 of 2010 revolve upon allegations of concealment of material and important matter; that the Respondent did not inform the trial court that his objection proceedings on the attachment of motor vehicle registration Number KAG 945F had been dismissed in case Number 463 of 2009. Appeal Number 145 of 2010 arose from case number 463 of 2010. Without determining whether the decision of Appeal No 145 of 2010 will affect Appeal No 120 of 2010, but in light of these facts, I must deal with these appeals in a manner that avoids any possibility of falling into error or placing myself in a situation which may become embarrassing- similar to the one obtaining in the matters before me. Therefore, out of abundance of caution, I direct parties to file submissions on Appeal No. 145 of 2010 within such time as shall be agreed among the parties. I will then decide both appeals at once either in a single judgment or separate judgments. The judgment in Appeal No 120 of 2010 is hereby arrested for a short while. It is so ordered.

Dated, Signed and Delivered in open court at Meru this 10th day of March, 2016

F. GIKONYO

JUDGE

In the presence of:

Mr. Thangicia advocate for Mr. Murango advocate for the appellant

Mr. Kungu advocate for Mr. Mugambi advocate for 4th respondent

Mr. Ringera advocate for 1st respondent

Mr. Mithega advocate for 2nd and 3rd respondents.

F. GIKONYO

JUDGE