



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 183 OF 1978

GICHANGA KARANJAPLAINTIFF

VERSUS

NJOMO KARANJADEFENDANT

RULING ON JURISDICTION OF THE HIGH COURT

1. This is one of the oldest cases that I have ever come across in this court. It was instituted in this court on 21st February 1978 vide plaint dated the same day. The claim by the plaintiff Gichanga Karanja against the defendant Njomo Karanja was for:
 - a. A declaration that the defendant holds 1.61 acres comprised in title No. Limuru/Bibirion/9 in trust for the plaintiff.
 - b. An order that the plaintiff be registered in the title No. Limuru/ Bibirion/9 along with the defendant as proprietors in common in the following shares 1.61 acres for the plaintiff and 8.0 acres for the defendant.
 - c. Alternatively that the court make an order that the defendant do transfer to the plaintiff 1.61 acres comprised in the said title.
 - d. Costs.
 - e. Such other or further relief as the court may deem just and equitable.
2. The case was heard by Shields J (as he then was) and judgment reserved for 15th April 1991 on the same day. The record shows that the judgment was delivered on 16th April 1991 dismissing the plaintiff's suit against the defendant on account of Limitation of Action Act Cap 22 Laws of Kenya, as the suit was brought after the end of 6 years.
3. The application herein dated 25th February 2016 seeks for an order directing the Kiambu District Land Registrar to forthwith remove the caution on the LR Limuru/Bibirioni/9 lodged by the plaintiff who is now deceased.
4. With the above background, it is clear to me that this matter was determined over 25 years ago. The dispute related to ownership of land. The defendant is now deceased. He died on 10th April 1985 before the judgment in this case. Letters of administration were issued to Peter Karanja Njomo and Simon Ngigi Njomo on 24th February 2005 and confirmed on 5th March 2008 distributing the estate of the deceased Njomo Karanja.
5. It is alleged that the deceased plaintiff had lodged a caution on the subject title and therefore it is difficult to distribute the land LR Limuru/Bibirion/9 among beneficiaries.
6. There is no evidence that the persons who are seeking for the orders in the application as per the affidavit of Simon Ngigi Njomo & Peter Karanja Njomo, were substituted as defendants in

this matter. Further, it is trite law that where a defendant dies and there is no substitution within 1 year, the suit abates. It has not been shown to this court that this suit which was determined in 1991 has not abated or that it was ever revived. And further, a decree having been in existence for over 20 years without any attempt to execute is statute barred. In other words, this matter is legally dead!

7. In addition, an application for removal of caution from title register can only be filed before the Environment and Land Court. This application is therefore misplaced at this point in the time since the Environment and Land Court has exclusive original and appellate jurisdiction to hear and determine all disputes relating to ownership, use and or title to land and a caution being an encumbrance on land can only be removed by an order of Environment and Land Court or the parties applying to the Land Registrar.
8. As it clearly appears to me this court has no jurisdiction to hear and determine the application by the applicant/defendant, and as jurisdiction is everything, without which, this court must down its tools and say no more.
9. Since this matter was heard and determined by this court in 1991 and as there is nothing to be placed before Environment and Land Court in view of my observations above, I proceed to strike out the application dated 25th February 2016 with no orders as to costs .
10. I order that this file be closed and archived as there is nothing else pending for determination.

Dated, signed and delivered at Nairobi this 12th day of April 2016.

R.E. ABURILI

JUDGE