



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL SUIT NUMBER 117 OF 2012

GODFREY KARIUKI GATHINGIPLAINTIFF/APPLICANT

VERSUS

GLADYS NJERI KIRONGO.....1ST DEFENDANT/RESPONDENT

JOSEPH WANJOHI KIBUTA.....2ND DEFENDANT/RESPONDENT

FRANCIS MUCHIRI NGUGI.....3RD DEFENDANT/RESPONDENT

RULING

1. Godfrey Kariuki Gathing, acting in person, brought the application dated 28th September 2015. It is premised on the provisions of **Order 22 Rule 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act**. He seeks the following orders:

1. ***THAT*** this application be certified as urgent and the service hereof be dispensed with at the first instance.
2. ***THAT*** this Honourable Court be pleased to stay and or set aside the ruling of the Honourable Lady Justice A. Mshila delivered on the 26th day of June, 2015 pending the hearing of the application herein interpartes.
3. ***THAT*** the Honourable Court be pleased to stay and or set aside the ruling and/or set aside the execution of the Judgment of the Honourable Lady Justice A. Mshila delivered on the 26th day of June 2015.
4. ***THAT*** the respondents be arrested as they defied court order issued by Honourable Justice Emukule not to interfere with the subject parcels as they have subdivided the same,
5. ***THAT*** the costs of this application be granted.

2. The application is based on grounds that on the date the ruling he seeks set aside was delivered, he had no notice and therefore did not attend court, and wishes to file an application for leave to file appeal out of time to challenge the legality of the title that is now held by the respondents.

3. In this supporting affidavit, the applicant depones that he has no finances to enable him engage legal counsel and “Kituo cha sheria” advocates have failed to assist him with legal aid. He seeks an order that the Respondents be restrained from the suit land as it risks being destroyed.

4. The application is opposed by an affidavit sworn on the 7th October 2015 by Joseph Wanjohi Kibuta, the second defendant, who deposes that the application is an abuse of court process applicant having made numerous applications and filed numerous suits in various courts seeking same reliefs after the main case giving rise to the appeal was dismissed against him by a judgment of the court in **SPMCC No. 33 of 2009** at Naivasha on the 3rd June 2010.

It is further deposed that following the dismissal orders of eviction from the said suit land, the applicant went to sleep for two years when he decided to file this appeal against the judgment. The Memorandum of appeal was filed on the 26th June 2012 – out of time and without leave of the court.

5. The Hon. Justice, Mshilla in her ruling on the Preliminary Objection dated the 26th June 2015 found the appeal incompetent and struck it out with costs to the respondents.

6. Not being satisfied with the court's orders, the applicant brought the present application.

The court has considered arguments by both the applicant and the Respondents together with the affidavit evidence and exhibits.

It is evident from the reliefs sought by the applicant that he neither understands the court process nor did he understand the meaning and purport to the trial courts judgment that he lost the suit land to the respondents, and that having filed an appeal therefrom out of time and without leave of court, and the court having struck out the appeal, there is no appeal on record. It is trite that ignorance of the law is not a defence.

7. In the application at hand, the applicant does not demonstrate to the court on what basis the order of dismissal of the appeal should be set aside. He blames Advocates who have failed do assist him in the case.

The respondents submission is that during the pendency of the appeal now struck out, the applicant went back to the Chief Magistrates Court and filed another case being **PMCC No. 350 of 2015** on the same matter between all the parties in the previous case and in the appeal. The said suit was dismissed on the 25th September 2015. It is then that the applicant filed this application.

The respondents urge the dismissal of the application as it is vexatious and gross abuse of the court process.

8. The court agrees with the Respondent's submissions. The applicant has been jumping from court to court seeking similar reliefs. As I stated above, the applicant has not persuaded the court by any reason or at that the application has any merit. He even deposes that the suit property has already been subdivided by the respondents thus rendering the suit property unidentifiable.

Even if the orders sought were to be granted, and the appeal was heard and determined in the applicant's favour, there would be no suit land to reclaim, the same having been subdivided and sold to various third parties.

9. It is trite that the court will not knowingly give orders that cannot be enforced. The orders sought if granted would prejudice the Respondents who have had absolute proprietorship interest on the suit land for the last six years and since exercised their rights of subdivision and have since transferred the resultant portions to third parties.

For those reasons, the court finds that the application dated 28th September 2015 lacks merit and is dismissed with costs to the respondents.

Dated, signed and delivered in open court this 5th day of May 2016

JANET MULWA

JUDGE