



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO 96 OF 2009

KARIUKI WACHIRA.....APPLICANT

VERSUS

ESTHER WANJIRU KARIUKI.....RESPONDENT

(Being an appeal against judgment and decree of Hon. W. K. Korir P. M. in Meru CMCC 820 of 2003)

R U L I N G

This application is dated 13th December, 2012.

During inter partes hearing of this application, Mr. Womache, Advocate for the applicant, told the court that the respondent had been duly served. He referred the court to an affidavit of service filed on 5.3.2014. He submitted that since the application had not been opposed, it should be allowed with costs to the applicant

It is true that a certificate of service was filed and on 5.3.2014. It is also true that the respondent did not come to court on 10.3.2014 when the application was to be heard.

I, however, note that in the appellant's Memorandum of Appeal in Civil appeal No. 96 of 2009, the removal of the cautions lodged against parcel Nos. Nyaki/Thuura/1645 and 1646 was one of the grounds of appeal.

Hon. Lady Justice Lesiit, J, delivered a judgment in this appeal on 22nd March, 2012. She found that the appellants' suit had merit. The respondent in this suit was an appellant in that suit. The Hon. Lady Judge set aside the decree of the learned trial magistrate in its entirety. In substitution thereof, she entered judgment for the Appellants and declared that the respondent, the applicant herein, held the suit properties, which are registered in his name, in trust for himself, the appellants and other family members.

It has not been demonstrated that the applicant who was the respondent in HCCA No.96 of 2009 filed an appeal to the court of appeal and had the judgment of this court set aside.

This application sought orders:

1. That this Honourable court do certify this matter as urgent and be heard exparte in the first instance.
2. That the honourable court do allow the applicant to act in person or appoint an advocate.

3. That the honourable court be pleased to issue an order that the unlawful caution lodged/placed against land parcels No.Nyaki/Thuura/1645 (sic) be removed forthwith.

4. Costs in the cause.

Prayer one is spent.

Prayer 2 is allowed to the effect that the respondent is free to conduct his cases either by himself or through an advocate. However, in this case he should have proceeded to the court of appeal for further adjudication. The grant of this prayer does not entitle him to appeal out of time.

Prayer 3 is dismissed. It amounts to an abuse of the court process. The applicant had knowledge that this court had delivered a judgment which had upheld the retention of the cautions the applicant wants removed.

I ward no costs.

Delivered in Open Court at Meru this 10th day of March, 2014 in the presence of:

Cc. Mwonjaru

Womache for the Applicant

P. M. NJOROGE

JUDGE