



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT KITALE

ELC APPEAL NO. 6 OF 2019

LYDIA NJERI KIPROP.....APPELLANT

VERSUS

GEOFFREY PKITE MOSOL.....RESPONDENT

Being an Appeal against the Ruling of the Honorable Resident Magistrate M.N. WAFULA

at Kapenguria Land Case No. 2 of 2019 delivered on 26/9/2019

JUDGMENT

1. What is before me for determination on Appeal is a matter which was heard and a Ruling delivered by the Hon. M.N. Wafula R.M; in the Principal Magistrate's Court at Kapenguria in **Land Case No. 2 of 2019** where the learned trial Magistrate, upon hearing counsel on her application by way of Notice of Motion dated the **25/2/2019**, delivered her Ruling on the **26/9/2019** dismissing the Applicant's Application with costs to the Respondent.

2. The Appellant, being dissatisfied with the judgment of the trial magistrate has filed the present Appeal before this court.

3. The grounds which the Appellant has raised in his Memorandum of Appeal include:

(1) That the learned trial Magistrate erred in law and in fact when she dismissed the application dated 25/2/2019.

(2) That the learned trial magistrate erred in law when she failed to appreciate the provision of Section 93(3) of the Land Registration Act.

(3) That the learned trial magistrate erred in law and in fact when she held that the Appellant had not set out a prima facie case.

(4) That the leaned trial Magistrate erred in law and in fact when she held that the appellant had to be the legal owner to establish her claim.

4. The Appellant thus sought for this appeal to be allowed and the ruling be set aside.

5. On **11/3/2020**, this Appeal was admitted to hearing and the court gave directions that the appeal be heard by way of written submissions wherein the respondent filed his submissions on **3/6/2020**.

6. I have perused the court file and found that there are no submissions for the Appellant. For this reason I consider that the appellant has not prosecuted his appeal.

7. I therefore have nothing as evidence to demonstrate to me that the appeal should be allowed as prayed by the appellant. I must state at this point that it is much worse where an appellant defaults in filing submissions to a substantive appeal than where submissions are not filed in an interlocutory application. This is principally because an appellant must be considered to be attempting to secure orders that will result in the overturning of the impugned decision, and it is incumbent for him or her to substantively urge his grounds and not just throw them at the court and leave it at that.

8. In view of the foregoing, I hereby order that the instant appeal is dismissed for want of prosecution.

Dated, signed and delivered at Kitale via electronic mail on this 4th day of September, 2020.

MWANGI NJORGE

JUDGE, ELC, KITALE.