



REPUBLIC OF KENYA

High Court at Embu

Civil Appeal 131 of 2012

STEPHEN MUGENDI NJIRU.....APPELLANT/APPLICANT

VERSUS

ANN NJOKI.....RESPONDENT

(Being an Appeal from the Judgment of R.O. OIGARA Ag. Senior Principal Magistrate Embu in CMCC 256 of 2011 on 21st December 2012)

RULING

This is the Notice of Motion dated 11th March, 2013 brought under Order 42 Rule 6 and 7, Order 45 Rule 1, 2, 3 & 5, Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act for the following orders.

1. ***The CMCC Judgment dated 21/12/2012 and all the consequential orders/decrees/ certificates/ warrants and/or rulings thereto be stayed pending the full hearing and determination of the HCCA No. 131/2012.***
2. ***The HCCA ruling dated 7/3/2013 be stayed, reviewed and set aside and such orders as to the re hearing of the Application dated 28/12/2012 be made.***
3. ***The costs of this application be provided for.***

The grounds are on the face of the application. The main ground is that the appellant/applicant is the registered owner OF LAND No. KYENI/KIGUMO/795. Further he says the court erred in allowing the Respondent to bury the deceased on the land hence infringing on his constitutional right under Article 40 of the Constitution and Section 25 of the Land Registration Act 2012. He also wanted Review of the court's Ruling of 7/3/2013.

The application is supported by the affidavit of the appellant/applicant. Of particular interest is what he says in paragraph 9 that the court should not have dealt with issues of burial and directing the DCIO to investigate his property. The Respondent/respondent did not file any response to the said application.

On 31/12/2012 the appellant/applicant filed an application seeking among others prayers of injunction, declaration that the appellant is the rightful owner of land parcel No. KYENI/KIGUMO/975, eviction of the respondent/respondent from the land. This is the application that culminated in the Ruling dated 7/3/2013.

The numerous prayers above had to be addressed by this court. The appellant/applicant cannot therefore turn around and state that the only prayer sought was an injunction. Mr. E. Njiru informed the Court on 16/4/2013 that the Respondent had buried the husband's body on the disputed land. This clearly

means there is no order to be stayed as per prayer 1 and 2 of the Notice of Motion.

I will therefore address prayer No. 3 ***“That the HCCA ruling dated 7/3/2013 be stayed, reviewed and set aside and such orders as to the hearing of the Application dated 28/12/2012 be made.”*** Review under Order 45 of the Civil Procedure Rules will be granted if the following are proved.

- (i) ***Discovery of such new and important matter or evidence.***
- (ii) ***Existence of a clerical or arithmetical mistakes or error apparent on the face of the decree.***

Besides the complaints of the applicant that the Court ought to have done or not done this and that the applicant has not placed before this Court any material to warrant any Review under Order 45 of the Civil Procedure Rules or the setting aside of the orders of 7/3/2013.

The Court has also not been told of its omissions to warrant the rehearing of the application dated 28/12/2012. Let appellant/applicant prepare his appeal expeditiously.

The application is found to lack merit and is dismissed with costs.

DELIVERED, SIGNED AND DATED AT EMBU THIS 2ND OF MAY 2013.

**H.I. ONG'UDI
JUDGE**

In the presence of:-

N/A by or for both parties

Njue CC