



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 244 of 1992

DANIEL MUGO KAMURUANA..... PLAINTIFF

VERSUS

MBOGO MRUAMBUI..... DEFENDANT

RULING

This suit was fixed by the plaintiff advocates for hearing today after which he served the defendants counsel with a hearing notice for today. Defendant and his counsel have attended but plaintiff has not attended. Plaintiff's counsel states that plaintiff went to his office last week and that it was agreed that plaintiff would see his counsel last Friday but that plaintiff did not see his counsel last Friday and has not attend court today.

Plaintiff's counsel applies for adjournment and states that if the adjournment is refused he will not be able to proceed with the case in the absence of the plaintiff.

Defendants counsel opposes the application for adjournment and says that his client came from Embu and had to sleep in Nairobi overnight. He states that there has been previous proceedings and that the subject matter of the suit does not exist as plaintiff has sub-divided the land sold some parts and retained others.

There is no good reason why plaintiff has failed to attend court today. He failed to meet his advocate last Friday.

I have perused the plaint. Plaintiff claims that in 1977 defendant closed the boundary between his land and plaintiffs land parcel no. Ngandori/Kitigi/1630 and took about one acre of plaintiffs land.

The main relief sought is that defendant do give possession of the portion he has taken to the plaintiff. There has been previous proceedings. In Meru High Court Civil Appeal No. 22/88. The order that this being a boundary dispute court had no jurisdiction until the Land Registrar had determined the boundaries pursuant to s. 21(2) of the Registered land Act.

There is no evidence that plaintiff had referred the dispute on the boundary to the Land Registrar before he filed this suit.

In any case Abstract of Title in respect of plaintiffs land parcel no 1630 has been shown to court. It shows that the title was closed on 6.2.90 upon mutation of land into new parcels nos 3560 - 3565. The Abstracts of Title for subdivisions have been produced. It is clear that sub divisions nos 3561, 2563 3564 and 3565 have been transferred to other persons.

It appears to me that the suit has been overtaken by the sub-division of the plaintiffs original title and transfer to others. It will not be possible to proceed with the current suit unless the plaint is amended.

It appears to me from the above circumstances that plaintiff has no interest in the suit and that there is no good reason to adjourn. I refuse the application for adjournment and as plaintiff counsel says that he is not able to proceed with the suit in the absence of the plaintiff, I dismiss the plaintiffs suit under order 1XB rule 4 of Civil Procedure Rules with costs to the defendant

E. M. Githinji

Judge

Mr. Kisebu present

Mr. Njiru present

22.10.97

Mr. Njeru for Njiru & Co., for defendants

Defendants bill of costs fixed for 4th December, 1997. Notice to issue

Signed

Executive Officer

29.4.98

Njeru for Njiru & Co., for defendant

Defendants bill of costs for 30th June 1998

Notice to issue.

Signed

Executive Officer

30.6.98

c.c. Odhiambo

Mr. Mogiri for plaintiffs

Mr. Njiru for defendant

Order By consent

Defendants Bill of costs against the plaintiff is taxed at shs 18,000/= all inclusive

1. Mr. Mogiri signed for plaintiff
2. Mr. Njiru signed for defendant

Signed

PRINCIPAL DEPUTY REGISTRAR.