



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APP. NO. 871 OF 1997

CATHERINE NJERI NG'ANGA.....PLAINTIFF

-versus-

JAMES MUNGAI KARANJA.....1ST RESPONDENT

GLADSOM AUCTIONEERS.....2ND DEFENDANT

R U L I N G

The High Court (Dugdale J.) in High Court Civil Appeal No. 93 of 1993 between Catherine Njeri Ng'ang'a and James Karanja upheld the appeal filed by Catherine Njeri Ng'ang'a and set aside the ruling of the lower court.

It was further ordered that costs of appeal and costs of the lower court be paid by the respondent landlord to the appellant tenant, that the landlord do pay the auctioneers charges within 30 days from the date of the judgment; that the court Broker/auctioneer do release the distressed goods the appellant forthwith. The judgment was given on 15th November, 1993 and order was issued on 25th November, 1993.

On 26th September, 1996 the applicant herein who was the appellant in the High court appeal No. 93 of 1993 filed an application by way of Notice of motion under civil application No. 871 of 1996 wherein she alleged that her goods have never been returned as ordered by the High Court on 15th November, 1993 and that the same goods are destroyed and/or are missing. She has therefore asked the court in his application to value and assess the goods so destroyed and/or damaged and the value be met by the respondents she has also asked for damages to be assessed for the beating she received from the auctioneers who acted on instructions of the landlord and the same be met by the respondent.

She has also asked for loss of user of the distressed goods also to be assessed by the court.

The application has been opposed and grounds of objection have been filed. Both respondents say they have complied with the High Court order in Civil appeal No. 93 of 1993.

Both advocates for the respondents are on record having challenged the procedure which the applicant has followed. Following that observation, the applicant filed yet another application by way of Chamber Summons seeking an order that her application dated 20/9/96 (Misc. Appn. 871 or 1996) be treated as having been filed in High Court Civil Appeal No. 93 of 1993.

The orders made under High Court Civil Appeal No. 93 of 1993 were specific. They did not address the subject of the value of goods, damages for assault and loss of user. I have noted that the applicant appears in person but she has understood the proceedings all along as she addressed the court on her application. The court does not sit on an advisory position but the advocates appearing for the respondents repeatedly stated and I believe in good faith, that the right cause of action is for the applicant to file a suit and more the court for the orders she seeks in this application. This of course is subject to the law of limitation.

On my part I find the application misplaced and proceed to dismiss the same with costs.

It is so ordered.

Dated and delivered at Nairobi this 30th day of April, 1997.

A. MBOGHOLI MSAGHA

JUDGE