

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI

civil misc appl 58 of 86[1]

Bernard Kiarie.....APPELLANTS

VERSUS

Benson Kamau Njoroge.....RESPONDENT

JUDGMENT.

R U L I N G

When this Notice of Motion came before me for hearing seeking for Orders in terms of Order 53, both Counsel agreed that they would canvas their application by way of written submissions. Both sides did place their submissions on record. I have carefully considered the written submissions.

Two problems have arisen and which make me believe that may be this application should have been argued before the Court. The 1st problem is the manner in which Counsel for the applicant has decided to make reference to the parties. It takes too much of an effort to ascertain which party he is referring to and in which of the numerous previous proceedings and cases, it is clear from the record that the applicant was not accorded an opportunity to address the Court in reply to the respondent's submission. In the result, an important submission was left unanswered to. In that:

"Your Lordship, the 2nd respondent herein has been issued with the Title Deed which actually defeats the applicant's application since the 1st registration is final under Cap 300 of the Laws of Kenya. The Title Deed was issued on 27/1/87 to the 2nd respondent after the Minister's decision which was made on 24/4/1986".

The Learned Counsel proceeded to contend that since the Title was not obtained by fraud, the respondent's rights cannot be challenged. It is for this reason I find that I am not able to rule on this important matter upon the written submission. I am no longer in the Superior Court. I hereby therefore Order that this application be heard de novo. File to be placed before Oguk (J) for fixing hearing dates forthwith. Orders accordingly.

Dated and delivered at Nairobi this day of 1998.
OWUOR
JUDGE OF APPEAL