



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MURANG'A

ELC APPEAL NO. 15 OF 2017

FRANCIS MUTURI.....APPELLANT

VS

FLORA WAMBUI KARANJA.....RESPONDENT

JUDGMENT

1. The Appellant and the Respondent are related, they being son and mother respectively. On the 6/9/96 the Appellant then as Plaintiff filed suit No. 220 of 1996 against the Respondent then Flora Wambui Karanja in the Senior Resident Court at Murang'a. The Appellant sought the following orders;

- a. A declaration that the Defendant holds land parcel LOC.4/GAKARARA/99 in trust for the Plaintiff.
- b. Dissolution of the trust and an order that the Defendant do transfer land parcel No. LOC.4/GAKARARA/99 to the Plaintiff free from all encumbrances.
- c. Costs of this suit plus interest.
- d. Any other relief as the Court may deem fit to grant.

2. On application by the Appellant then as Plaintiff, the lower Court on 22/10/96 granted an order restraining the Respondent then the Defendant, her servants and /or agents from harassing evicting or in any other manner disturbing the Plaintiff in his occupation of Land Parcel No LOC4/GAKARARA/99.

3. After hearing the case the lower Court on 12/11/97 made the following orders;

- a. The Defendant holds the suit land in trust for her two sons namely Francis Muturi Mburu and Peter Karanja Mburu who are the 1st and 2nd Plaintiffs as at the time judgment was delivered.
- b. That the trust of the suit land by the Defendant are dissolved
- c. The suit land be divided into two equal parts for the 1st and 2nd Plaintiffs.
- d. There be no order as to costs in the suit.

4. The learned Magistrate in the said judgment after delivery granted a right of appeal to the parties within 28 days.

5. Being dissatisfied with the said judgment the Appellant on 9/8/2000 filed this appeal. A complete record of this appeal was filed on 14/8/2003 at the High Court in Nyeri.

6. By leave of the Court granted on 16/6/15 the Appellant on 7/7/15 filed an amended Memorandum of Appeal.

7. Appeals from the lower Court are filed pursuant to the provisions of section 79G of the Civil Procedure Act. The said law states as follows;

“Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time”.

8. The complete record of Appeal does not bear evidence of the date that the Appellant was supplied with certified copies of the proceedings and judgement of the lower Court. Nevertheless, the lower Court record shows that copies of the proceedings were paid for on 21/7/98 by the Appellant s then Advocates Messrs. R M Kiboi & Co Advocates and are certified by the Court on the 23/7/98. The same record of the lower Court indicates that on the 24/8/99 RM Gikandi Advocate applied to the lower Court as Advocates for the Plaintiff being the Appellant in this appeal with proceedings in the lower Court case and sought to be issued with a certificate of delay. It appears in the lower Court record that the Court declined to issue such certificate and stated that it was not to blame for any delay in supplying the proceedings.

9. Going by the matters set out above it is clear that the Appellant through his then Advocates paid for the proceedings on the 21/7/98 so much so that if the lower Court was to issue any certificate of delay in compliance with section 79G of the Civil Procedure Act quoted above then the same could not exceed the date the proceedings are indicated to have been certificated being the 23/7/98. The Appellant has not sought in the record of appeal or submissions or other pleadings stated when or not the proceedings and judgement were supplied. This Court takes it that the proceedings and judgment duly certified were supplied to the Appellant on the 23/7/98. Indeed the record of the proceedings as supplied to this Court indicate the 23/7/98 as the date the same was certified by the lower Court. There is no explanation by the Appellant as to why certified copies of judgement and proceedings were paid for on the 21/7/98 and certified on 23/7/98 and not supplied to him until a latter date which is not disclosed.

10. Having found that the proceedings and judgment were supplied on the 23/7/98 and guided by the provisions of section 79G of the Civil Procedure Act quoted above it falls in conclusion that the appeal filed on the 9/8/2000 without leave of the Court is incompetent.

11. In the circumstances, the memorandum of appeal is struck out and the entire appeal dismissed with costs to the Respondent.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF JANUARY, 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Ms Makobu for the Appellant

Gacheru for the Defendant

Irene and Kuyiyaki, Court Assistants