



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
ELC CASE NO. 91 OF 2016
(Formerly Nyeri HCCC 70 OF 2010)(O.S)
IN THE MATTER OF
L.R. NO. KIRIMUKUYU/GACHUIRO/256
AND
IN THE MATTER OF ORDER XXXVI RULE 1
OF THE CIVIL PROCEDURE RULES

BETWEEN

WACHIRA GITHINJI.....1ST PLAINTIFF

GATAHI GITHINJI2ND PLAINTIFF

VERSUS

KANOTHI GITHINJI.....DEFENDANT

RULING

1. The application filed by Wanderi Muthagani advocate for the defendant, is dated **27th February, 2019**. It seeks review and amendment of the following sections of the judgment dated **26th September, 2018**;

- (i) In(a) Paragraph 21 line 3 by deletion of the word “plaintiff” and substitution therefore with the word “defendant”
 - (b) Paragraph 22 lines 2 and 7 by deletion of the words “plaintiff” and substitution therefore with the word “defendant”
 - (c) Paragraph 24 lines 2 and 10 by deletion of the words “plaintiff” and substitution therefore with the word “defendant” and “defendant’s” respectively
 - (d) Paragraph 27 lines 1 by deletion of the word “plaintiff” and insertion of the word “defendant”
- (ii) In the following paragraphs;
 - (a) Paragraph 24 line 7 by deleting the word “defendants’ ” and substituting therefore the work “plaintiffs’ ”
 - (b) Paragraph 24 line 9 by deleting the word “defendants” and substituting therefore the work “plaintiffs”
 - (c) Paragraph 24 line 2 by deleting the word “defendants” and substituting therefore the work “plaintiffs”

2. The application is premised on the fact that there is confusion in the judgment because the court erroneously used the words plaintiff and

defendant interchangeably.

3. The application is not opposed. Counsel for the plaintiff/respondent was served with the application and acknowledged receipt on 27th February, 2019 but did not file any response to the application or attend court for hearing of the application.

4. I have looked at the judgment and the sections pointed out by counsel for the applicant which are said to have mistakes. I wish to point out that what was before the court for determination was the defendant's counterclaim and not the plaintiffs case which was dismissed for want of prosecution on 24th September, 2013. Under the circumstances, the defendant in the main suit became the plaintiff in the counter-claim and the plaintiffs in the main suit became the defendants in the counter-claim. In light of the above, I find that some parts of the judgments have errors which I regret. In exercise of the power of the court under **Section 99** of the Civil Procedure Act, (Cap 21 Laws of Kenya), the Judgment of this court delivered on 26th September, 2018 is hereby corrected as follows:-

Page 7: Paragraph 14 is: When the defendant's (hereinafter referred to as the plaintiff in the counter-claim) suit came up for hearing, counsel for the plaintiffs (hereinafter referred to as the defendants in the counterclaim), Mr. Kingori, informed the court that he had since ceased acting for the defendants and transferred the file to Mr. Kimunya who had taken over the matter from him **not** When the defendant's suit came up for hearing, counsel for the plaintiffs, Mr. Kingori, informed the court that he had since ceased acting for the plaintiffs and transferred the file to Mr. Kimunya who had taken over the matter from him.

Page 8: Paragraph 15 is: Because counsel for the plaintiff insisted on his client being heard citing the advanced age of his client and the delay in conclusion of the matter, the court placed the file aside to give Mr. King'ori time to contact Mr. Kimunya **not** Because counsel for the defendant insisted on his client being heard citing the advanced age of his client and the delay in conclusion of the matter, the court placed the file aside to give Mr. King'ori time to contact Mr. Kimunya.

Page 8: Paragraph 16 is: Because neither Mr. King'ori, Mr. Kimunya or their clients were in court when the matter was later called for hearing, the court allowed the plaintiff to prosecute his counter claim **not** Because neither Mr. King'ori, Mr. Kimunya or their clients were in court when the matter was later called for hearing, the court allowed the defendant to prosecute his counter claim.

Page 8: Paragraph 17 is: The plaintiff who is advanced in age (he is 90 years old) informed the court that the defendants are his younger siblings; that the defendants had instituted the suit herein claiming that he holds the suit property in trust for them; that he filed a replying affidavit denying the defendants claim and explained how he obtained the suit property. In September, 2013 he attended court for hearing of the defendants' case and because the defendants (plaintiff in the main suit) did not attend court their case was dismissed. He produced the documents listed in his list of documents as **Dexbt 1 to 4** and urged the court to grant him an order for eviction of the defendants and their families from the suit property **not** The defendant who is advanced in age (he is 90 years old) informed the court that the plaintiffs are his younger siblings; that the plaintiffs had instituted the suit herein claiming that he holds the suit property in trust for them; that he filed a replying affidavit denying the plaintiffs claim and explained how he obtained the suit property. In September, 2013 he attended court for hearing of the plaintiffs' case and because the plaintiffs did not attend court their case was dismissed. He produced the documents listed in his list of documents as **Dexbt 1 to 4** and urged the court to grant him an order for eviction of the plaintiffs and their families from the suit property.

Page 9: Paragraph 18 line 1 is: The plaintiff, through his advocate, filed submissions which I have read and considered **not** The defendant, through his advocate, filed submissions which I have read and considered

Page 9: Paragraph 19 is: From the pleadings and the submissions filed, this court finds the sole issue for determination to be whether the plaintiff has made up a case for being granted the orders sought or any of them **not** From the pleadings and the submissions filed, this court finds the sole issue for determination to be whether the defendant has made up a case for being granted the orders sought or any of them.

Page 9: Paragraph 20 is: Concerning that issue, from the documents produced by the plaintiff, in particular a copy of title deed and certificate of official search, it is clear that the plaintiff is the registered proprietor of the suit property **not** Concerning that issue, from the documents produced by the defendant, in particular a copy of title deed and certificate of official search, it is clear that the defendant is the registered proprietor of the suit property.

Page 12: Paragraph 25 is; For the foregoing reasons, I find and hold that the plaintiff has made up a case for being declared the exclusive owner of the suit property and for eviction of the defendants from the suit property **not** For the foregoing reasons, I find and hold that the plaintiff has made up a case for being declared the exclusive owner of the suit property and for eviction of the plaintiffs from the suit property.

Save as aforesaid, the said judgment is affirmed and reiterated herein.

Dated, signed and delivered at Nyeri this 27th day of March, 2019.

L N WAITHAKA

JUDGE

Coram:

N/A for the plaintiffs

N/A for the defendants

Court assistant - Kimeli