



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 04 OF 2019

STANLEY NYAGA M'BEI.....1ST APPELLANT

CALVIN GITONGA M'BEI.....2ND APPELLANT

VERSUS

M'BEI KIRAITHE.....RESPONDENT

JUDGMENT

(Being an Appeal from the Ruling of Hon. J. M. Njoroge, CM at Chuka, delivered on 6th February, 2019 in Chuka CMCC No. 62 of 2018).

1. The Memorandum of Appeal in this matter reads as follows:

MEMORANDUM OF APPEAL

The appellants herein being dissatisfied with the ruling of J. M. Njoroge C.M. in undated Preliminary Objection **in CMCC No. 62 of 2018** delivered in court on **6th February, 2019** appeals to this court and raises the following principle (sic) grounds of appeal:-

1. That the learned trial magistrate erred in law and facts by holding that CMCC No. 62 of 2018 was res judicata vis a vis Meru High Court Misc Application No. 102 of 2004.
2. That the learned trial magistrate erred in law and fact by failing to appreciate that one Caroline Mukwamugo was appearing in a representative capacity representing the late Erick Mugambi in CMCC No. 62 of 2018.
3. That the learned trial magistrate erred in law and facts by making a finding and holding that grounds 3,4,5,6 and 7 were matters that can be raised in appeal granted that appeal is purely a question of law and not facts.
4. That the learned trial magistrate erred in law and fact by failing to appreciate what a preliminary objection should consist to wait a pure issue of law and not facts.
5. That the learned trial magistrate erred in law and facts by shutting out (sic) from the seat of justice by failing to accord a hearing which was an affront to the cardinal principles of natural justice.
6. The learned trial magistrate erred in law and facts by believing the respondent's allegation against one Nimrod Miriti who is not a party to this appeal or CMCC No. 62 of 2018.
7. The learned trial magistrate erred in law and facts by failing to be guided by the authorities cited by the appellant in their submissions in opposition to the preliminary objection despite the authorities being binding on him.

Reasons wherefore the appellant proposes to the honourable court that it issues the following orders;

a. That this appeal be allowed.

b. That the orders of the learned trial magistrate of 6th February, 2019 be set aside and or vacated and the same be substituted with an order that CMCC No. 62 of 2018 be listed for hearing.

c. That the respondent be ordered to pay cost of the instant appeal and cost in the lower court proceedings.

Dated at chukka this 28th day of February, 2019

2. The appellants in this appeal are the sons of the respondent. When the parties came for directions on **20th May, 2016**, they agreed to settle this matter out of court and asked the court to give them up to **10th July, 2019** to sort out the pertinent issues.

3. On **10th July, 2019** the appellants told the court that each of them had given their father, M'Bei Kiraithe a sum of **Kshs.15,000/=**. The **1st appellant** told the court that his father had agreed to transfer to him Land Parcel No. **Mwimbi/South Mugumango/1849** which was about **2 acres in size**. The **2nd appellant** told the court that his father had agreed to transfer to him Land Parcel No. **Mwimbi South Mugumango/1852** which was approximately **2 acres in size**.

4. The respondent told the court that he and his sons had resolved all outstanding issues and that what remained was for him to **transfer apposite suit lands to them**. He asked the court to **record a judgment to that effect**.

5. In the circumstances, judgment in this appeal is entered as follows:

i. The respondent **M'Bei Kiraithe** is to transfer Land Parcel No. **Mwimbi/South Mugumango/1849** to the 1st Appellant, **Stanley Nyaga M'Bei**, within **3 months** of this judgment failing which the **Deputy Registrar** of this court is **empowered to execute all documents** necessary for implementation of this order and should this be necessary the concerned **Land Registrar**, shall dispense with production of the apposite Title Deed.

ii. The respondent, **M'Bei Kiraithe**, is to transfer Land Parcel No. **South Mugumango/1852** to the 2nd Appellant, Calvin Gitonga M'Bei, within **3 months** of this judgment failing which the Deputy **Registrar** of this court is **empowered to execute all documents** necessary for implementation of this order and should this be necessary, the concerned **Land Registrar**, shall dispense with production of the apposite title deed.

iii. Parties shall bear their own costs.

iv. This appeal is deemed heard and determined definitively.

6. Orders accordingly.

Delivered in open court at Chuka this 31st day of July, 2019 in the presence of:

CA: Ndegwa

Stanley Nyaga M'Bei – 1st Appellant

Calvin Gitonga M'Bei – 2nd appellant

M'Bei Kiraithe - Respondent

P. M. NJOROGE

JUDGE