



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC APPEAL NO.26 OF 2014

PETER GITHIU KOMU.....APPELLANT

=VERSUS=

PETER CHEGE NDUU.....RESPONDENT

RULING

1. This is a Ruling in respect of an application dated 15th March, 2017 which seeks orders directed at the District Land Registrar Gatundu to cancel title *Nos. Kiganjo/Gatei 2139-2141* which arose out of *LR No. Kiganjo/Gatei /50*.
2. The appellant/applicant and the respondent are cousins. The respondent is a legal representative of the estate of his late father *Suleiman Ndua Kiarie* (Deceased). The deceased had filed a suit (*Thika SPMCC No. 2447 of 1994*) against the applicant herein and another. Despite the applicant and his co-defendant being given time to participate in the hearing, they did not forcing the trial Magistrate to proceed to hear the case ex-parte.
3. It would appear that there was another case at Gatundu Law Courts whose details are not known but can be discerned from the undated judgement of the trial Magistrate in the Thika case. From that judgement it is clear that the applicant and his co-defendant were to get 4 acres from *Kiganjo /Gatei/46* but they insisted that they get the same from *LR No. Kiganjo/Gatei/50*.
4. The applicant and his co-defendant somehow managed to get three acres out of *LR No. Kiganjo/Gatei/50*. This is what provoked the deceased to file the Thika case in which he obtained orders directed at the applicant and his co-defendant to re-convey back the land to the deceased. The deceased and or his estate executed the decree and re-conveyed back the land to the deceased.
5. The applicant later applied for leave to file an appeal against the judgement from the Thika Court. Leave was granted on *31st July 2014* . The applicant then prepared a record of appeal which is incomplete and filed an application for stay of execution and injunction. In a ruling delivered on *4th March 2016*, the applicant was granted *stay of execution* and *injunction orders*. When the applicant took the order to the Gatundu District Land Registrar for registration against the title, the same could not be registered as *LR No.Kiganjo/Gatei/50* had already been closed and new subdivisions were in place. This is what provoked the filing of the current application.
6. From the searches annexed to a letter dated 16th January 2017 from the District Land Registrar Thika, *LR No.Kiganjo/Gatei/50* was closed on subdivisions on 23rd December 2004. The respondent contends

that the subdivisions were carried out before stay orders were obtained and that no orders of cancellation can be given based on an application.

7. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. The subdivisions on LR No. Kiganjo/Gatei/50 were done on 23rd December 2004. Stay orders were obtained on 4th March 2016, twelve years later. There is a lot of confusion in this matter. The applicant seems to suggest that there are two different cases that is ***Thika SRMCC No.247*** of 1994 and ***Thika SRMCC NO. 2447 of 1994***. The applicant has however annexed a judgement from Thika SRMCC No.2447 of 1994. If this is the judgement he is appealing against and if it is the one which was upheld on appeal then I do not understand why he is making a second appeal to this court. However if the upheld judgement was arising from Thika SRMCC 247 of 1994 then, the applicant has annexed a wrong judgement. However be that as it may, it is clear that the application for cancellation of title cannot be allowed at the moment. The applicant should prepare a complete record of appeal which includes proceedings and the entire judgement of the High Court. This is because I notice from the record of appeal that it does not contain pages 3-6. I dismiss the applicant's application with no order as to costs. As this property falls within Thika ELC Court and more particularly where the lower Court case was heard, I direct that this file be transferred to Thika ELC Court for hearing and disposal of the appeal.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 6th day of February, 2018.

E.O.OBAGA

JUDGE

In the presence of;-

Appellant in person

Court Assistant : Kajuju

E.O.OBAGA

JUDGE