

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L APPEAL NO. 10 OF 2015

RODA NANGA MUHUNJI:..... APPELLANT

VERSUS

JOSEPH KIHUNDU MAKAMBI:.....RESPONDENT

JUDGEMENT

INTRODUCTION

This is the judgement in respect of an Appeal against the Ruling in Kapsabet Principal Magistrates Court Civil Case No.319 of 2011 where the Magistrate dismissed appellant's application dated 4th May 2015.

This case was filed by the plaintiff/Respondent herein for orders for a permanent injunction against the Defendant/Appellant in 2011. The case was heard in the lower court and a judgement delivered on 22/7/14 whereby the court dismissed both the plaintiff's suit and the defendant's counter claim.

The defendant/appellant herein filed an application dated 4/5/15 seeking for the implementation of the decree which application was opposed and later dismissed by the Magistrate. It is this application that is the subject of this Appeal.

This appeal was admitted for hearing on 22/6/16 and set down for hearing on 20/9/17. Counsel for the Appellant indicated to the court that they had served a hearing notice to the respondent and filed an affidavit of service. Counsel further indicated that he spoke to Mr Mwinamo Counsel for the respondent who indicated that he would not be participating in the case. Counsel agreed to canvass the appeal by way of written submission which he filed.

Mr. Chemwok submitted on the 6 grounds of appeal and urged the court to allow the appeal. I have looked at the submissions by the counsel for the appellant and wish to state that this is not an appeal against the judgement of the lower court but an appeal against the ruling dismissing an application for implementation of the decree.

It is important to note that both the plaintiff's claim and the defendant's counterclaim were dismissed with costs so in my view there was nothing left to be implemented. The only issue that the plaintiff and the defendant would have followed were the costs of the dismissed suits. The issue of the access road was the gist of the suit and the same was dismissed. If the parties were dissatisfied with the judgement then they could have filed an appeal against the judgement and not file an application for the implementation of the decree. I find that there is nothing left to be implemented as was rightly found by the Honourable Magistrate.

I therefore find that this appeal has no merit and is dismissed with costs to the respondent.

Dated and delivered at Eldoret on this 11th day of October, 2017.

M. A. ODENY

JUDGE

Read in open court in the presence of:

Mr. Keter holding brief for Mr. Chemwok for the Appellant

Mr. Oduor holding brief for Mr. Mwinamo for Respondent

Mr. Koech : Court Assistant