



Wachira & 2 others (Suing as the Legal Representatives of the Estate of the Late Benson Mukuwa Wachira) v Assumption Sisters of Nairobi Registered Trustees (Civil Appeal (Application) 121 of 2006) [2023] KECA 536 (KLR) (12 May 2023) (Ruling)

Neutral citation: [2023] KECA 536 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 121 OF 2006
K M'INOTI, HA OMONDI & KI LAIBUTA, JJA
MAY 12, 2023**

BETWEEN

**ELPINAH MANGA WACHIRA 1ST APPELLANT
CAROLYNE WANDIA WACHIRA 2ND APPELLANT
JAPHET WANJAU WACHIRA 3RD APPELLANT
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
BENSON MUKUWA WACHIRA**

AND

**THE ASSUMPTION SISTERS OF NAIROBI REGISTERED
TRUSTEES RESPONDENT**

(Being an application for clarification of the Judgment and Orders of the Court of Appeal of Kenya at Nairobi (A. Visram, G. B. M. Kariuki & P. M. Mwilu, JJ.A.) delivered on 30th September 2016 in Civil Appeal No. 121 of 2006)

RULING

1. By a notice of motion dated February 14, 2023, the respondent, the Assumption Sisters of Nairobi Registered Trustees, moved this Court pursuant to sections 3A(2) and 3B(1) (a) of the *Appellate Jurisdiction Act* (cap. 9) seeking clarification/interpretation of its judgment delivered on September 30, 2016 with regard to whether the respondent acquired ownership of the entire suit property (LR No. 209/9010, Nairobi) by way of adverse possession as surveyed or delineated in the survey map or just the portion described as “Area A” in the draft sketch map produced by the surveyor. They urged that “costs be in the cause”, the meaning of which is not apparent to us, because the appeal has already been determined with finality and the issue of costs determined. There is simply no pending ‘cause’.



2. The Motion was supported by the annexed affidavit of Sister Maria Felix sworn on February 14, 2023 and was anchored on 10 grounds, which we need not replicate. Suffice it to observe that the gist of the respondent's Motion is to seek the Court's interpretation of the phrase "suit land" with reference to the judgment of the High Court (Ojwang, J.) dated 10 March 2006.
3. In his judgment, the learned Judge had found that the appellants' title to the "suit land", which was described as "Area A" was deemed extinguished through the respondent's advanced possession, and that the respondent had become entitled thereto by dint of adverse possession. The learned Judge ordered that the respondent be registered as proprietors of an estate in fee simple of the land described as "Area A" in LR No. 209/9010 comprising 0.4284 Hectares or thereabouts in place of the appellants.
4. It is that judgment that was the subject of appeal to this Court, and which the court upheld, dismissing the appellants' appeal.
5. Learned counsel for the respondent, M/s. W. G. Wambugu & Company, filed written submissions dated April 3, 2023 in which they urged the court to clarify its judgment so as to resolve the apparent misinterpretation and ambiguity. According to Mrs. Wambugu, it was in the interest of justice that the court grants the orders sought.
6. In their replying affidavit sworn on March 27, 2023, the appellants contend that the respondent's motion was without merit; and that the court used the term "suit land" to refer specifically to "Area A".
7. In her oral submissions, learned counsel for the appellants, Ms. Ndirangu, contended that there was no ambiguity in the judgment or in any part thereof as alleged by the respondent. According to her, it only remains for the parties to identify the area "A" occupied by the applicants, demarcate it as shown on the sketch map/plan submitted by the surveyor, subdivide and transfer to the respondent. She urged the Court to dismiss the Motion with costs.
8. Having carefully addressed ourselves to the respondent's motion, the affidavits in support and in reply, the portion of the judgment sought to be clarified/interpreted, and the rival submissions of learned counsel, we find no ambiguity in the court's judgment to warrant interpretation. We agree with counsel for the appellants that what remains to be done is purely administrative, and that the court's intervention is not called for.
9. It is also clear to our minds that this court did not by any means interfere with the impugned judgment of the trial court. Indeed, if any interpretation of the words used was required, it should have been sought in the court below. All that this court did was to dismiss the appeal and uphold the decision of the trial court. In the circumstances, we find no basis on which we can be called upon to exercise the court's inherent jurisdiction to interpret a judgment of the superior court. In effect, the respondent's Motion fails and is hereby dismissed with costs to the appellants.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2023.

K. M'INOTI

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JUDGE OF APPEAL

H. OMONDI

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JUDGE OF APPEAL

DR. K. I. LAIBUTA



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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

