



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, MUSINGA & GATEMBU, JJ.A)

CIVIL APPEAL NO. 329 OF 2009

BETWEEN

RICHARD AKWERESA ONDITI..... APPELLANT

AND

KENYA COMMERCIAL BANK LIMITED.....RESPONDENT

(Being an Appeal from the judgment of the High Court of Kenya at Kakamega, (Tanui, J.) dated 18th September, 2001

in

H.C.C.C. NO. 65 OF 1993)

RULING OF THE COURT

1. In November 1984, the appellant borrowed a sum of Kes.189,000/= from the respondent (the bank) to purchase a posho mill and weighing machine for his business. That loan was secured by a charge registered against the appellant's 28-acre piece of land situate in Kakamega County and known as **Title No. Kakamega/Chekalini/416** (the charged property).
2. The appellant defaulted in the repayment of that loan. He pleaded with the bank, which on several occasions, postponed scheduled auctions to realize the security. In May 1988, the bank allowed him to subdivide the charged property and to sell a portion thereof to clear or reduce his indebtedness. He subdivided the charged property into four portions and sold one of them on 8th October 1990 for Kes.180,000/= which was paid to the bank. In the appellant's view, that should have cleared his indebtedness with the bank but he was advised that after that payment, there was still a balance of Kes.340,000/=. At the bank's request, he signed a further charge over the remaining three subdivisions to secure that balance.
3. The appellant again defaulted in the repayment of the balance with interest thereon. When the bank threatened to sell the charged portions, the appellant filed a suit in the High Court at Kakamega and sought the surrender to him of the title deed to the charged portions, claiming that he had fully repaid the amount due to the bank. The bank counter-claimed a sum of Kes.1,636,264.55 in that suit.

4. After hearing that suit, Tanui, J. dismissed it and entered judgment for the bank in the counter-claim with costs and interest. The appellant appealed to this Court against that decision. In a long judgment outlining the history of the case, this Court dismissed that appeal on 12th November 2010. In his notice of motion dated 31st January 2011, the appellant invoked the provisions of Rule 35 of the Court of Appeal Rules and in effect sought a reversal of that judgment. In its ruling dated 14th February 2013, this Court dismissed that application on the ground that it was a disguised appeal against its own said judgment of 12th November 2010. This Court made it clear that it has no jurisdiction to sit on appeal against its own decisions. Rule 35 allows it to revisit its own judgment or ruling only to correct inadvertent clerical or arithmetical errors or to correct any errors in its orders to harmonize them with its judgment.
5. Undeterred, the appellant came back to this Court with an application dated 9th September 2014 brought under Rules 5(2)(b), 22(1) & (3), 31, 56(2) and 112 of the Court of Appeal Rules as well as Articles 27(1), 28, 35(1)(b) & (2) and 40(3) & (6) of the Constitution. In that application, the appellant wants this Court to set aside its said ruling of 14th February 2013 on the ground that this Court “omitted a point of law,” which is a sum of Kes.64,800,000/= that he had claimed in his earlier application of 31st January 2011 brought under Rule 35 of the Court of Appeal Rules.
6. We have considerable sympathy with the appellant for the loss of his piece of land. But that loss was through a lawful process. He charged his piece of land to the bank but defaulted in the repayment of the loan and the bank eventually sold it. The appellant, who gives us an impression as a fairly intelligent man, has refused to accept and live with that reality. There is nothing this Court can do for him. This Court has repeatedly told him, and we wish to repeat for the umpteenth time, that it has no jurisdiction, under any of the provisions the appellant has cited in his present application or any other law, to reverse its earlier decisions. Besides being totally unfounded, his claim for Kes.64,800,000/= for alleged loss of user of his land cannot be entertained in an application under Rule 35 of the Court of Appeal Rules.
7. For these reasons, we find no merit in this application and we accordingly dismiss it. As the bank did not oppose the application, we make no order as to cost.

Dated and delivered at Kisumu this 4th day of March, 2016.

D.K. MARAGA

JUDGE OF APPEAL

D.K. MUSINGA

JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

JUDGE OF APPEAL

I certify that this is the true copy of original.

DEPUTY REGISTRAR