



IN THE COURT OF APPEAL OF KENYA
AT NYERI
Civil Appeal 123 of 2003

GEOFFREY MWANGI WACHIRA APPELLANT

AND

JOSEPH MWANGI IRUNGU..... RESPONDENT

(An Appeal from the Order of the High Court of Kenya

at Nyeri (Juma, J) dated 7th November, 2002

in

H.C.C.C. NO. 2 OF 1990

JUDGMENT OF THE COURT

This case is extremely old, and has a checkered history. It is also the subject of some confusion in the mind of the appellant, who is unrepresented. In 1989, a suit was filed against him in the superior court by Joseph Mwangi Irungu (“the respondent”) accusing him of having unlawfully transferred the respondent’s land being Iriaini/Gatundu/119 (“the suit land”) to himself. The respondent asked the court to order that the suit land be re-transferred to him. When the case came up before Tunoi, J as he then was, on 3rd December, 1990 the parties consented to refer the dispute to arbitration before the District Officer Mathira, assisted by a panel of four village elders. Eventually, on 16th June, 1994 the panel of arbitrators filed their Award before the superior court, and judgment was entered in terms of the Award. The Award granted the suit land to the respondent. No application to set aside or appeal was ever preferred against that award or judgment and order. However, the appellant refused to transfer the suit land back to the respondent, and the superior court directed the executive officer to execute the transfer documents. That was done, but the appellant refused to vacate the land, and so, the respondent sought eviction orders by an application dated 28th November, 1995. The application was allowed by Osiemo, J on 21st February, 1996. The appellant still did not vacate the suit land, and eventually on 4th July, 1997 the parties entered into a consent giving the appellant one year, i.e. up to May 1998 to vacate the suit land. That is the consent order that is the subject of the appeal before us. The appellant, who, as we said, is unrepresented, has filed the following five grounds of appeal:

1. *The learned Judge erred in law and failed to notice that nowhere in the entire suit had the appellant or his counsel signed a consent for the appellant to move from the suit premises.*
2. *The Hon. Learned Judge erred in allowing an application dated 19th April, 2002 for eviction whereas the applicant was not a party to the suit.*
3. *The Hon. Learned Judge erred in law and failed to take into account the applicant while making an application for eviction was actually making an application for execution for a decree which was non-existent as no decree had been extracted from the time judgment was entered in terms of the arbitrations’ (sic) award.*
4. *The learned Judge erred in law and failed to give considerations (sic) that the appellant intended to appeal against the decision of the Hon. Mr Justice Tunoi dated 3rd December, 1992 and that there was a Notice of appeal to this effect*

only that proceedings were not supplied by the High Court.

5. The learned Judge erred in making and issuing an eviction order in favour of a dead person namely Joseph Mwangi Irungu who died on 19th December, 1997 and no substitution had been made.

In his submissions before this Court, the appellant reiterated that he was challenging the consent order dated 7th November, 2002, and wanted “to be returned to the suit land”. When asked how the setting aside of that consent order would help him when the suit land had already been transferred to the respondent pursuant to the judgment and order of the superior court, the appellant seemed not to comprehend the legal issues.

The fact is that the aforesaid arbitration award was entered as a judgment of the superior court on 16th June, 1994. There was no appeal filed against the same. Pursuant to that order, the suit land was transferred to the respondent.

The consent order that is sought to be set aside in this appeal was intended simply to give him time to vacate the suit land. Even if he succeeds, that cannot reverse anything done pursuant to the judgment, against which there was no appeal preferred.

We find that this appeal is completely misplaced; it has no basis, and is dismissed with costs to the respondent.

Dated and delivered at Nyeri this 12th day of June, 2009.

R. S. C. OMOLO

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JUDGE OF APPEAL

D. K. S. AGANYANYA

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JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR