



**Patel & 2 others v Maccu Motors Limited & 11 others (Environment & Land
Case 31 of 2018) [2023] KEELC 16474 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16474 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 31 OF 2018
CK NZILI, J
MARCH 22, 2023
(FORMERLY HIGH COURT CIVIL SUIT NO. 124 OF 1997)**

BETWEEN

**BIKABHAI MATHUBHAI PATEL 1ST PLAINTIFF
CYPRIAN IBURI NGARURO 2ND PLAINTIFF
DR. FRANK KAMBE MWONGERA 3RD PLAINTIFF**

AND

**MACCU MOTORS LIMITED 1ST DEFENDANT
YUSUF MUSA MUCHEKE 2ND DEFENDANT
MR. KIRUKI T/A GT MOTORS 3RD DEFENDANT
GERVASIO KARIUKI 4TH DEFENDANT
SALIM KIMATHI 5TH DEFENDANT
JAMES MBAABU 6TH DEFENDANT
JOHN KURIA 7TH DEFENDANT
FRANCIS MURIITHI 8TH DEFENDANT
JOHN GATEMBU 9TH DEFENDANT
HENRY MURIUNGI 10TH DEFENDANT
NICHOLAS KINYUA 11TH DEFENDANT
NJOROGE T/A SUNBIRD SERVICES 12TH DEFENDANT**



RULING

1. The court through a notice of motion dated December 15, 2022 is asked to issue a demolition order on structures erected on LR No Meru Municipality/Block/11/50 and the OCS Meru police station directed to offer security during the eviction exercise. The grounds as contained on the face of the application and the supporting affidavit of Time Karimi Yusuf sworn on December 15, 2022 are that: the temporary structures belong to her, were leased to some tenants over vacant possession; that they were ordered to vacate the land and hand it over to the plaintiffs. That despite notices issued to the tenants, they have declined to vacate as per copies annexed as TK “2”. The application was opposed through a replying affidavit sworn by Cypriano Iburi Ngaruro on January 25, 2023, on behalf of the other plaintiffs on the basis that the applicant’s counterclaim having been dismissed, the alleged structures form part of the land and are appurtenant to the land decreed to them. That the application amounts to relitigating a matter afresh.
2. Further the application was opposed by Nancy Kaari a representative of the 20 tenants through her replying affidavit sworn on January 30, 2023; she attached an authority to act and plead thereto. It was averred that there was no tenancy relationship between applicants since their landlord was the plaintiff herein to whom they pay rent. That it was averred that the tenants had filed Meru CMCC No 808 of 2003 where they obtained restraining orders. That the structures on the land were erected by them with the consent of the plaintiffs at a huge cost hence they were strangers to the alleged notices and would suffer grave prejudice if the application was allowed.
3. The application was also opposed by the 1st defendant through an affidavit by its CEO Robert Muthamia sworn on January 16, 2023. He averred that there are pending applications and an appeal before the Court of Appeal Nyeri. That the order sought herein if allowed would prejudice them due to the pending appeal. Therefore, the 1st defendant urged the court to pend the demolition pending the hearing and determination of the appeal.
4. The court has carefully gone through the court records. The applicant herein had sought for a review of the judgment delivered on June 3, 2019. The court in a ruling dated July 28, 2021 made a finding that the applicant’s defence and the counterclaim stood dismissed in the said judgment.
5. The applicant herein was the 2nd defendant in the suit in which the plaintiffs were seeking vacant possession and mesne profits. By a defence and counterclaim dated November 28, 1997, the applicant among other defendants had sought for a declaration to invalidate the allocation of the suit land to the plaintiffs and a permanent injunction upon the death of the initial applicant her husband. Meru HCCC No 7 of 2004 was filed seeking for the compensation of structures, filed by the applicant was consolidated with this file becoming the running file.
6. Due to the foregoing, it is quite obvious that the application before court is not merited for the following reasons:
 - i. First there is nothing that has been demonstrated in the nature of a decree directed at the applicant to hand over vacant possession.
 - ii. Secondly, the applicants lost the counterclaim and a subsequent application for review was also dismissed.
 - iii. Thirdly, the alleged tenants are not parties to this suit nor has the applicant sought to join them to this suit.



- iv. Fourthly, no positive orders were made by the court against the applicant vis a vis against the alleged tenants.
- v. Fifthly, the decree holders have in their replying affidavit indicated to the court that there are no structures on the suit land belonging to the applicant which they expect her to hand over and or perhaps tenants belonging to her who should vacate the land in favour of the decree holders.
7. On the contrary, the said tenants have sworn a replying affidavit confirming that their landlord is the decree-holder and not the applicant.
8. Therefore, if there is no privity of contract between the applicant and the said tenants and more importantly, if the decree holders are not complaining that the applicant has not delivered upon any vacant possession as decreed it is illogical for the applicant to seek the court to issue orders in vain.
9. The decree holders have averred on oath that the tenants and the structures on the suit land do not belong to the applicant. They have not issued a notice to show cause to the applicant to deliver up vacant possession. The decree holders are the best suited to move the court against whoever is on the suit land. The applicant admitted that she was not on the suit land but other third parties who now own under whose authority they are on the land which was decreed to the plaintiffs.
10. Eviction and demolition are governed by sections 152a, 152b, 152d, 152e, f & g of the *Land Act*. Even if the court were to find the applicant entitled to the prayers sought, still the notices attached hereto offend the said sections of the law and can only be issued by the decree holders.
11. The upshot is the application dated December 15, 2022 lacks merits and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 22ND DAY OF MARCH, 2023

In presence of:

C/A: John Paul

J.M Mwangi for plaintiffs

Mwirigi B. for the 2nd applicant present

HON. C.K. NZILI

ELC JUDGE

ELC 31 OF 2018 - RULING	0
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