



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL APEAL NO. 84 OF 2019

FLESIA WANJA CHERU.....APPELLANT

VERSUS

JAMLECK KAMAU MWANIKI.....RESPONDENT

RULING

1. This appeal is against the Ruling of the Wang'uru Senior Resident Magistrate P.M. Mugure in Civil Case No. 42 of 2019 (stated as ELC CASE No. 42 of 2019 in the Ruling) delivered on the 14.10.2019.

2. By an application dated 19.11.2019, the Appellant sought ORDERS that:-

1) Spent.

2) That there be a stay of execution of the ruling delivered on 14.10.2019 pending the hearing and determination of the application and the Appeal.

3) That pending hearing of this application the court do issue an injunction restraining the Respondent by himself, members of his family, agents servants or any other person from repossessing rice holding No. 2461 A Thiba Section of Mwea Irrigation Scheme, harvesting the Appellants rice due for harvesting in about one week's time, or interfering in any whatsoever with the appellants quiet possession and use of the rice holding.

4) That pending hearing and determination of this application there be a stay of proceedings in Wang'uru SPMCC No. 42 of 2019.

5) That costs of this application be provided for.

3. Grounds for the application are stated at the face of the application and by a supporting affidavit sworn by the applicant on the 19.11.2019 and filed on even date.

4. In opposition to the application, the Respondent filed a replying affidavit on the 8.1.2020. To urge the application, the parties herein filed written submissions.

5. The suit that gave rise to the impugned ruling was filed on the 9.7.2019. The Defendant, now the Respondent in the Appeal is the Licencee of Rice holding No. 2461 A Thiba Section of Mwea Irrigation Scheme, measuring 2 acres that he had leased to the Plaintiff/Appellant – between the period 2012 and 2015, for six seasons for a sum of Shs.180,000/= which was paid in full, but before expiry of the lease period, the defendant terminated the lease but failed to pay back the sum of Shs.202,000/= being for the unexpired period of the lease and preparation costs for the rice holding.

6. The relief sought was an order of injunction barring the defendant from interfering with the plaintiff's quiet possession and use of the leased rice holding until the expiry of the lease period, the year 2025, and costs of the suit.

7. By an application dated 9.7.2019 based on Order 40 Rule 2 of the Civil Procedure Rules (CPR) the applicant (plaintiff) sought orders of injunction, to restrain the defendant from repossessing and or interfering with the plaintiffs quiet possession and use of the said rice holding pending hearing and determination of the application and the suit.

8. The ruling was delivered on the 14.10.2019 declining the orders sought. The ruling is the subject of the appeal, and the application under review, dated 19.11.2019. On the same date, the court (Gitari J) granted an interim order of stay of execution of the ruling, and by an injunction order restrained the respondent from repossessing the rice holding pending hearing and determination of the application.

9. I have considered the background to this appeal. The cause of action in my considered opinion arises from certain lease agreement touching on the Rice holding No. 2461 A Thiba Section of Mwea Irrigation Settlement Scheme, for the use and possession of the said Rice hold; being a matter of use, occupation and possession of land.

Article 162 (2) (b) of the Constitution, Parliament established courts to hear and determine disputes relating to (a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

10. The Environment and Land Court Act Chapter 12 A was thus established for the said purpose. Section 13 thereof gives the said court jurisdiction to hear and determine disputes relating to land use, title and occupation. **Section 13 (2) (d)** is relevant in that it relates to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land.

11. A lease, as is the case in this matter is an enforceable interest in land wherein one party conveys land, property or services to another for a specified period of time, for an agreed consideration.

12. By the foregoing, it is evident that the High Court has no Jurisdiction to hear and determine cases involving the use, occupation and tile to land. That is the preserve of the ELC Court.

13. For the said reason, I am unable to entertain the appeal and any application filed thereunder. For the ends of justice and expeditious disposal of the suit, pursuant to provisions of **Section 1A, 3A and 3B of the Civil Procedure Act**, I hereby transfer this Appeal to the Environment and land Court for hearing and determination.

14. The parties are directed to mention the matter before the ELC Judge, upon the appeal being given an appropriate serial number at the ELC Registry, for directions on the appeal and the application dated 19.11.2019. The interim orders of stay and injunction are extended to 4.3.2021 when the matter shall be mentioned before the judge.

Orders accordingly.

Delivered, Dated and Signed at Kerugoya this 18th Day of February, 2021.

J.N. MULWA

JUDGE