



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISC CIVIL CASE NO 13 OF 2020**

**DARAJA SELF HELP GROUP (through their  
chairman Ibrahim Guyo).....PLAINTIFF/APPLICANT**

**VERSUS**

**BENARD M'NKUBITU.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**JOSEPH MURUNGI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**LUCIA KABUL.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. By a Notice of Motion dated 10/2/2020, the applicant has sought stay of proceedings in Maua CRC No. 3040 of 2019 pending determination of MERU ELC CASE No. 5 OF 2020 on ownership of property. The application is premised upon grounds set out in the application and supporting affidavit. In a nutshell they argued:

a) That the applicants were charged with the above criminal case with the offence of forcible retainer contrary to section 91 as read with section 36 of the Penal Code.

b) That they have lived on the suit property for over 12 years and have filed court action for adverse possession.

c) That court is in the process of determining ownership of the suit property, hence, the need to stop the criminal proceedings.

2. I have been called upon to stop a criminal proceeding at Maua for the reason that the suit property is subject to an ownership dispute in ELC No.5 of 2020. From the papers filed, the ELC suit was filed on 29/1/2020; yet, the criminal proceedings were instituted on 30/9/2019. The proceedings in ELC are now being used to call for stay of the criminal proceedings. This is problematic.

3. In any case, the complaint in this application should be presented as a defence to the charges or as an issue for determination in the criminal trial. Courts have stated time without number that criminal trial is a can only be stopped where it is being used oppressively or is an abuse of process, or is being used for purposes other than bringing the accused to justice. None of these exists. There is absolutely nothing on which this court can stop the criminal process or has been alleged. I reject their application. This ruling be served upon the trial court. It is so ordered.

**Dated, signed and delivered at Narok through Teams Application this 23<sup>rd</sup> day of November, 2020**

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**F. GIKONYO**

**JUDGE**