



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC PETITION NO 7 OF 2022

IN THE MATTER OF ARTICLES 24 AND 159 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF ARTICLE 28, 43, 50 AND 57 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS

AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.

BETWEEN

PETER THUO KAMAU.....1ST PETITIONER

GRACE MUTHONI THUO.....2ND PETITIONER

AND

LUCY WAMAITHA KIARIE.....1ST RESPONDENT

SAMUEL KIARIE.....2ND RESPONDENT

PRESBETERIAN CHURCH OF EAST AFRICA (PCEA)

(sued through its Registered Trustees).....3RD RESPONDENT

PRESBETERIAN CHURCH OF EAST AFRICA (PCEA) THINDIGUA

(sued through its Registered Trustees).....4TH RESPONDENT

THE CHIEF LAND REGISTRAR, NAIROBI.....5TH RESPONDENT

RULING

1. This is the Notice of Motion dated 17th February 2022. The Petitioners/Applicants seek orders in terms of prayer no 2 of the notice of motion.
2. The grounds are that the 1st Petitioner/Applicant is sickly and that the Respondents are on the process of evicting him and his family from the suit property.
3. Mr. Mudanya for the Respondents opposes any grant of conservatory orders on the grounds that the issues were heard and determined in ELC 93 of 2015 (OS) and a judgment rendered.
4. I have considered the notice of motion and the affidavit in support. I have considered the rival submissions. The issue for determination is whether this court ought to grant any conservatory orders in the meantime.
5. The parties participated in ELC 93 of 2015 (OS): Peter Thuo Kamau and Grace Muthoni Kamau vs Lucy Wamaitha Kiarie & 5 Others.

6. This court rendered Judgment on 23rd September 2021. This court found that the Plaintiffs were in occupation of the suit property with permission. The Plaintiffs' suit was dismissed with costs to the 1st, 3rd and 5th Defendants. This court on the date of delivery of Judgment granted a stay of execution for forty-five (45) days.

7. It is the Petitioners/Applicants case that they have preferred an appeal against the said judgment and that an application for stay of execution is pending in the Court of Appeal.

8. The Petitioners/Applicants first filed this Petition in the High Court (Constitutional & Human Rights Division). The same was transferred to this court.

9. I find that the application herein is an abuse of the court process. I am not persuaded that the Petitioners/Applicants deserve this courts discretion.

10. I decline to grant any conservatory orders in the mean time.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 17TH DAY OF MARCH, 2022

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Mudanya for the Respondents

No appearance for the Petitioners

Steve - Court Assistant