



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Civil Case 6 of 2002

KINYUA JACTON.....PLAINTIFF

VERSUS

FRANCIS MUCHIRA KIURA.....1ST DEFENDANT
PETER MANGA KIURA.....2ND DEFENDANT
MARY NJERI KIURA.....3RD DEFENDANT
JAMES MBOGO KIURA.....4TH DEFENDANT
JAMES MUCHIRI KIBURI.....5TH DEFENDANT
JEREMIAH MUCIRI MALIAH.....6TH DEFENDANT
ALVAN MUTERO MIGUONGO.....7TH DEFENDANT
MWANGI NJAU MBAI.....8TH DEFENDANT
ELIZABETH MUTHONI NJIRU.....9TH DEFENDANT

RULING

The Applicant moved this court on 12/10/2009 under a certificate of urgency for 2 orders. Prayers (a) and (b) of the application are already spent and the matter is coming up for ruling in respect of prayer (c) which is to the effect that:-

(c) “ That the defendant jointly and severally, by themselves, their agents, servants or anybody acting on behalf of or on the instructions of the defendants be restrained from evicting and/or attempting to evict the plaintiff and members of his family from land parcels Numbers Ngariama/Rung’eto/1262, 1263, 1265 and 1266 destroying the plaintiff/Applicant’s houses and other properties on the said parcels of land or in any other way interfering with the plaintiff’s use and occupation and properties on land parcels Numbers Ngariama/Rung’eto/1262, 1263, 1265 and 1266 pending the hearing and determination of this case.”

The same is premised on 8 grounds on its face and a supporting affidavit dated 12/10/2009 with several annexures.

The 5th and 6th Respondents filed grounds of objection dated 30/10/2009 confirming that the applicant was indeed evicted from the suit land but this was through a valid court order which had been obtained in Gichugu Land Disputes Tribunal No. 3 of 2008. They stated that the said order has never been set aside or appealed against.

In his replying affidavit, 7th Respondent on his part also mentioned the order issued in Land Disputes Tribunal No. 3 of 2008 which he said has never been appealed against. He also cited 5 other cases in respect of the same suit land

which the applicant had failed to disclose to this court. He annexed the notice to give vacant possession (AMM2) which was served on the applicant by a court Bailiff.

The warrant to give vacant possession of the land in question to 7th and 8th Respondents AMM1 and the document dated 12/10/2009 from the Court Bailiff (AMM3) confirming that the warrant had been executed and the applicant had been evicted from the land in question.

When the matter came up for the hearing of the application, 7th Respondent was cross-examined on his affidavit. He admitted that the applicant had been evicted pursuant to the court order from Gichugu and that he was no longer on the land in question. The applicant himself conceded that he had actually been evicted and his crops uprooted. Both counsel tendered written submissions which I have carefully considered.

To me, this is a very straightforward matter. The applicant has been lawfully evicted from the land in question. This was pursuant to a Judgment and decree from a court which decree was never appealed against. A temporary injunction pending the hearing of the suit does not therefore arise. The court cannot be asked to give restraining orders to restrain what has already happened. Giving such orders would amount to giving a mandatory injunction under circumstances that do not certainly call for such drastic orders.

This court cannot order or direct that the applicant returns to the plot from which he has already been lawfully evicted. I might also add that the plaintiff/applicant has come to court with heavily soiled hands. He ought to have disclosed the several other cases he was involved in which related to the same subject matter. The Plaintiff/Applicant is trying to use this court vide this application to reverse the eviction order from Gichugu Court which has already been executed. This cannot be allowed. His application must therefore fail. I dismiss the same with costs to the Respondents who responded to the same.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 16th day of Feb 2010

In presence of:- Mr. Okwaro for applicant Mr. Maina Kagio for 5th and 6th Respondent also holding brief for Mr. Njage.