



**Mburugu & another v Muthuri (Environment & Land Case 23 of 2013)
[2022] KEELC 12766 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 23 OF 2013
CK NZILI, J
SEPTEMBER 28, 2022**

BETWEEN

SILAS KIOGORA MBURUGU 1ST APPLICANT

JOSEPH MUTHOMI NGARUTHI 2ND APPLICANT

AND

LOISE NKATHA MUTHURI RESPONDENT

RULING

1. Before the court is an application dated March 4, 2022 seeking for an order of eviction of the plaintiff from the applicant's Parcel No Meru Municipality Block 1/1/244.
2. The grounds are contained on the face of the application and the supporting affidavit of Joseph Muthomi Ngaruthi.
3. The application is opposed by an affidavit of Loise Nkatha Muthuri sworn on March 24, 2022, on the basis that the judgment did not grant such prayers to the defendant and that such substantive orders cannot be determined through an application since the applicant had not filed any counterclaim.
4. The respondent averred after leave to appeal out of time was granted on October 2, 2019, she complied with the conditions for the maintenance of the status quo by depositing Kshs.200,000 before this court as security.
5. Further the respondent stated her appeal was awaiting allocation of a date for hearing which is the preserve of the Court of Appeal and not the parties, hence the application lacks merits.
6. It is not disputed that the court on November 28, 2018 rendered its judgment and dismissed the plaintiff's case with costs based on the originating summons dated January 21, 2013 and the defendants replying affidavit sworn on November 7, 2013. The defendants had filed no defence and or a counterclaim seeking for vacant possession and or eviction orders.



7. Following the judgment, the court on February 27, 2020 issued an order for the maintenance of and preservation of the status quo obtaining as at the delivery of judgment on November 28, 2018. This was to remain up to November 28, 2019.
8. The applicant was also ordered to deposit Kshs 200,000/= as security within 30 days. The applicant complied with the said order and paid the Kshs 200,000/= on October 4, 2019.
9. In a ruling delivered on November 17, 2021 the issue before the court was a request for the extension of the stay orders. The court made a finding that what was on record were orders of status quo hence the application was held res judicata due to the dismissal of a similar application by an order dated April 20, 2021.
10. There is no dispute that there is a pending appeal in Nyeri Court of Appeal and the security ordered by the court still subsists.
11. Order 42 rule 6 (1) of the *Civil Procedure Rule* deals with stay of execution. The court is asked to grant eviction orders in the name of executing a decree when none has been attached in favour of the applicants. Other than executing for costs which is not the case here in no other positive order was made by the court, in the nature of vacant possession or eviction. In Order 21 rule 30 (1) of the *Civil Procedure Rules*, parties are bound by their pleadings. Orders or prayers flow from pleadings and evidence. See *Stephen Mule Mutinda v IEBC* (2017) eKLR.
12. In *Thomas Ratemo & 2 others v Zachariah Isaboke Nyaata & another* (2021) eKLR, the court held a warrant of eviction was erroneously made since there was no such substantive prayer by the defendants in their pleadings.
13. In this suit the applicants are seeking for an eviction which was not provided for in the judgment of this court. In the premises I find the application lacking merits.
14. The same is dismissed and the file is marked closed.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 28TH DAY OF SEPTEMBER, 2022.

In presence of:

C.P Mbaabu for plaintiff

Mwendwa for defendant

HON. C.K. NZILI

ELC JUDGE

