



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

Civil Appeal 39 of 1998

EDWARD MUGAMBI APPELLANT/RESPONDENT

VERSUS

JASON MATHIU RESPONDENT/APPLICANT

AND

HIGH COURT MISC. CASE NO. 102 OF 2002

EDWARD MUGAMBI APPELLANT/RESPONDENT

VERSUS

JASON MATHIU RESPONDENT/APPLICANT

RULING

Parties hereof have had a long history with each other at the courts of law. Jason Mathiu (hereinafter called Jason) agreed to sell his land then known as Katheri Farmers Co. Ltd (Hook's Farm) now known as GAKAWA/KAHURURA/BLOCK 3/203 to Edward Mugambi (hereinafter called Edward). Jason, by a

plaint filed at SRM Court Nanyuki Case No. 74 of 1992 sought an order of eviction against the defendant, Edward. The allegations in that suit were that Edward had not paid the full purchase price. The said court found in favour of Jason and ordered for the eviction of Edward. Edward appealed against that decision in Meru High Court Civil No. 39 of 1998. The High Court upheld the finding of the SRM Nanyuki Court. Edward being yet again dissatisfied with the High Court judgment filed an appeal at the Court of Appeal No. 286 of 2002. The court of Appeal upheld the High Court decision. Whilst those cases were proceeding, Edward and his son Jacob Kiranya M'Raubuni filed High Court Meru Misc. Application No. 102 of 2002 (O.S) for adverse possession of the same property. *Ex parte* judgment was entered in favour of Edward and his son Jacob following which a title was issued for the afore stated proper in favour of Edward. The *ex parte* judgment was set aside by consent on 17th May 2006. The court is now faced with two applications in this ruling in HC Misc. No. 102 of 2002 and HCA No. 39 of 1998. The application in HC Misc. No. 102 of 2002 is filed by Edward and Jacob. The application is dated 20th June 2007. It has a prayer that:-

“The Honourable Court be pleased to issue an order of stay of eviction of the applicants (Edward and Jacob) from L.R. GAKAWA/KAHURURA/BLOCK B3/203.”

It is brought under Sections 3, 3A and 63 of the Civil Procedure Act. Counsel appearing for Jason criticized the application and termed it incompetent for having relied on the wrong provisions of the law. He argued that orders of stay should be sought under OXXI of the Civil Procedure Rules. That argument has no merit because Order XXI deals with stay of execution after judgment has been entered. Here there is no judgment being executed. What I understand Edward and Jacob to be seeking is restraint on Jason from evicting them until the originating summons is heard and determined. There being no specific order in the Civil Procedure Rules dealing with that scenario they were quite entitled to rely on Section 3A of the Civil Procedure Act.

The other application subject of this ruling is dated 2nd June 2009 and is filed by Jason in HCA No. 39 of 1998. It seeks the eviction of Edward from the suit property. It should be recalled that HCA No. 39 of 1998 is the one that was subject of Court of Appeal case No. 286 of 2002. By that application brought under Order XXI Rule 30 Jason sought eviction of Edward and Jacob.

In my view, since the Misc. Application no. 102 of 2002 has not been concluded its best that *status quo* be maintained on the suit property. However, the parties herein have now, for too long, been at the law courts and I will at the reading of this ruling order that the originating summons be heard on a priority basis. In the end the orders of this court are:-

1. The applications in Misc. High Court Case No. 102 of 2002 (O.S.) dated 20th June 2007 and the application in HCA No. 39 of 1998 dated 2nd June 2009 are dismissed with no orders as to costs.

2. The status quo on parcel LR. No. GAKAWA/KAHURURA/BLOCK 3/203 are to be maintained until further orders of this court.

3. At the reading of this ruling, Misc. HCC No. 102 of 2002 (O.S.) shall be fixed for hearing on a priority basis.

Dated and delivered at Meru this 26th day of November 2009.

MARY KASANGO

JUDGE