Kiniu v Ann Wairimu Ndungu and Stanley Ndungu Murigi Both t/a Annrose Nursery and Primary School & another (Environment and Land Case Civil Suit 179 of 2009) [2023] KEELC 466 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEELC 466 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE CIVIL SUIT 179 OF 2009

LN MBUGUA, J

FEBRUARY 2, 2023

BETWEEN

JOSEPH NDICHU KINIU ..... PLAINTIFF

AND

ANN WAIRIMU NDUNGU AND STANLEY NDUNGU MURIGI BOTH T/A ANNROSE NURSERY AND PRIMARY SCHOOL ..... 1ST DEFENDANT

MBAKASI RANCHING COMPANY LTD ..... 2ND DEFENDANT

RULING

1. Judgement was entered herein in favour of the plaintiff on June 23, 2022. The plaintiff then filed the Notice of motion application dated August 1, 2022 seeking orders that the officer commanding Ruai Police station be directed to facilitate the enforcement of the said judgment so as to restrain the defendants/their agents or servants from trespassing, alienating or in any way dealing with the properties known as LR No Block 105 (Embakasi Ranching) /1927 and Nairobi Block 105 (Embakasi Ranching) /1928 permanently.

2. The application is based on grounds on its face and on the plaintiff's supporting affidavit sworn on August 1, 2022. He deposes that the 1st defendants have been in violation of the permanent injunction order given by the court in the judgement delivered on June 23, 2022 as they have not vacated the suit properties. He points out that the 1st defendants have not stayed or challenged the said judgement. He annexed a photograph of structures on the suit land to buttress his argument.

3. In opposition to the aforementioned application, the 1st defendants filed grounds of opposition and a replying affidavit contending that they have proffered an appeal against the judgement herein, hence they should be afforded time to ventilate the appeal, arguing that they have always been in possession of the suit properties. The 1st defendants further contend that they have filed an application for stay of

the judgement in the court of appeal which application has not been objected by the plaintiff; adding that it is draconian to seek the 1st defendants' eviction when the actual location of the parties' plots has not been pointed out/identified by the 2nd defendant's surveyor and considering that there is a running educational institution on the suit properties.

4. In response to the 1st defendants' replying affidavit, the plaintiff filed a further affidavit sworn on November 14, 2022 contending that the 1st defendants only filed an application dated September 26, 2022 seeking stay of the judgment herein at the court of appeal in reaction to the instant application. He points out that the application was not certified urgent as the same is a time buying tactic and an abuse of the appellate process.

5. I have considered all the arguments raised herein including the submissions of the parties. Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure the ends of justice are met- See *Equity Bank Limited v West Link MBO Limited* Civil Application No 78 of 2011. In the case at hand Judgment was delivered way back in June 2022. By the time the current application was filed in August 2022, there was no mention of any appeal against the said Judgment. In any event, the issue of stay is not a subject of determination before this court. The court is also functus officio in relation to the land ownership dispute as the court has duly pronounced itself.

6. I therefore find that the application dated August 1, 2022 is merited, the same is allowed and the 1st defendants are condemned to pay costs of the said application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Nganga for plaintiff

Mabeya holding brief for Mr. Omari and M/s Anita Masaki for 1st defendant

M/s Maina holding brief for Mr. Odiyo for the Garnishee

Court assistant: Eddel