



**Republic v Land Adjudication and Settlement Officer, Tigania
East; Ngera (Exparte); Muthuri (Interested Party) (Judicial Review
17 of 2016) [2022] KEELC 2554 (KLR) (13 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW 17 OF 2016**

**CK NZILI, J
JULY 13, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER, TIGANIA
EAST RESPONDENT**

AND

MISHECK MIRITI NGERA EXPARTE

AND

SOLOMON K. MUTHURI INTERESTED PARTY

RULING

1. Before the court is the application by the interested party seeking for an order directed at the exparte applicant to give vacant possession of LR 514 Akaiga Adjudication section in compliance with the judgment delivered on June 3, 2019 in default the court bailiff with the support of the OCS Mikinduri police station to put the interested party into possession.
2. The application is supported by an affidavit sworn on January 17, 2022 by Solomon K. Muthuri. The grounds are that the exparte applicant is still in possession and in order to implement the judgment there is need to issue the orders since he has refused or failed to vacate the land which has gravely prejudiced the interested party.
3. By an affidavit in reply sworn on 3.2.2022 Misheck Miriti Ngeera the exparte applicant opposes the said application as filed in bad faith, based on falsehoods, lacking material disclosures and lacking merits



- due to the pending appeal at Nyeri Civil Application No. 125 of 2020 and would stand prejudiced should this application be allowed as the suit premises is his only home where his family resides.
4. In written submissions dated March 22, 2022, the exparte applicant submits a notice of appeal was filed dated June 6, 2019 subsequent to which on December 24, 2020 he applied for stay of execution which application is pending directions before the Court of Appeal.
 5. It is submitted that given the Court of Appeal is seized of the matter, this court in granting the orders ought would be usurping the Court of Appeal jurisdiction by determining such matters.
 6. Reliance is placed on *Charles Mwangi Gitundu v Charles Wanjohi Wathuku* [2021] eKLR and the court is urged to find the application misconceived, made in bad faith and aimed at defeating the court of justice.
 7. Further the exparte applicant submits the court should down its tools for lack of jurisdiction based on the holding in *Owners of the of the Motor Vessel Lillian "S" v Caltex oil (K) Ltd* [1989] eKLR.
 8. As regards costs based on Section 27 *Civil Procedure Act*, the exparte applicant urges the court to find the application, frivolous and vexatious due to the pendency of the appeal which the interested party knew and hence should be slapped with costs. Reliance is placed on *David Kiptum Korir v KCB & another* [2021] eKLR.
 9. This court rendered its judgment on June 3, 2019 dismissing the exparte applicant's notice of motion dated June 20, 2016 in which he sought to quash the decision made on June 8, 2016 in objection No. 154 over Parcel No 514 Akaiga adjudication section for lack of jurisdiction. The respondent and the interested party were duly served with the notice of motion but failed to respond to it or participate in the proceedings.
 10. The court proceeded to dismiss the notice of motion for lack of merits with costs.
 11. A decree was issued on July 23, 2020. There is no evidence that the interested party ever entered appearance and or sought to enforce the decree on costs. The court has not come across any positive order made in this file in favour of the interested party except that of costs where he was to justify and apply for their taxation.
 12. The issue of vacant possession was never before this court. Likewise, there is no pending application for stay before this court. The pendency of an appeal does not amount to an automatic stay. This court has powers once moved in an appropriate manner to determine post judgment application. So, it cannot be true that the interested party or any other respondent for that matter wishing to approach this court is barred by law to do so simply because an application is pending before the Court of Appeal.
 13. I therefore find no merits in the submissions by the exparte applicant that the application herein was intended to annoy the court and that the interested party should be condemned to pay costs.
 14. In the premises, I find no merits in this application. The same is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 13TH DAY OF JULY, 2022

In presence of:

Orimbo for applicant

Kieti for respondents

HON. C.K. NZILI



ELC JUDGE

