



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 20 OF 2019 (OS)

DAVID KINYUA.....PLAINTIFF/APPLICANT

VERSUS

MOSES MUTHURI MUKINDIA.....1ST DEFENDANT/RESPONDENT

FLORENCE KAGWIRIA GIKUNDA.....2ND DEFENDANT

ERIC MWENDA MBATINGA.....3RD DEFENDANT

JULIUS KIRIMI M'MUKINDIA.....4TH DEFENDANT

KABURU M'MUKINDIA M'MBATINGA.....5TH DEFENDANT

M'KIRERIA M'MUKINDIA.....6TH DEFENDANT

JUDGEMENT

1. Before me is an application dated 4.2.2021 where the applicant/plaintiff is seeking a stay of proceedings in ELC No. 1B of 2019 at Githongo law courts pending the hearing and determination of the proceedings herein. The grounds in support of the application are that:

(i) The 1st defendant/respondent herein has filed a suit before the Githongo Law Courts vide ELC case No. 1B of 2019 seeking orders of permanent injunction, eviction orders from land parcel LR No. Abothuguchi/Katheri/4046 and mandatory injunction praying that the plaintiff/applicant herein demolishes all his developments on the suit land.

(ii) That further, this honorable court issued an order of injunction and inhibition in respect to the locus in quo pending hearing and determination of this matter and any orders issued from the lower court will be contrary to the said orders.

(iii) It is in the interest of justice and fairness that multiplicity of law suits over the same subject matter be avoided to avoid embarrassing the judicial process and it is therefore only just that proceedings in ELC case no. 1B of 2019 be stayed pending hearing and determination of this matter.

(iv) The applicant stands to suffer significant prejudice if the proceedings in ELC Case No. 1B of 2019 proceeds as the determination in the High Court matter will determine if he has an interest in respect to the suit land.

2. The applicant has also filed a supporting affidavit where he has reiterated the grounds set out in the face of the application adding that this court has already issued him with an order of inhibition and injunction on 14.5.2019. He also avers that if eviction orders are issued, the proceedings herein would be rendered nugatory and he will suffer irreparable damages.

3. The 1st respondent has opposed the application vide his replying affidavit dated 12.3.2021. He confirms the existence of the at Githongo law suit ELC no. 1B of 2019 for the eviction of the plaintiff/applicant from the suit land parcel no. L.R Abothuguchi/Katheri/4046. That he filed the suit on 14.1.2019, 4 months before the applicant filed the current suit. Thus the applicant cannot claim that there is multiplicity of suits as the subject matter in each case is based on different and independent issues of law.

4. The 1st defendant also averred that injunctive orders alluded to by the applicant in paragraph 4 and 5 of his supporting affidavit have lapsed as they were never extended.

5. The 1st defendant also averred that the application by the plaintiff/applicant came very late in the day as the suit ELC 1B of 2019 at Githongo is set for judgment on 17.5.2021 and that the parties have closed the main hearing of the suit and have filed submissions on the same.

6. The 1st defendant also in reply to applicant's paragraph 8 and 9 of his supporting affidavit stated that all issues arising from the ownership and rights over the suit land in ELC 1B of 2019 at Githongo Law Courts were heard and determined by this court in ELC 234 of 2013 on 26.7.2017.

7. The 1st defendant avers that this application was filed in bad faith, it is a waste of courts time and it's malicious in nature and is intended to impede his constitutional right to be heard, hence he will be prejudiced if the application is allowed.

8. A perusal of the record indicates that the suit was withdrawn as against the 4th respondent. The 5th and 6th respondent who act in person do not oppose the application.

9. I have considered all the arguments raised herein. The question for determination is whether to grant the orders of stay of proceedings before the Githongo magistrate's court, particularly the delivery of the judgment.

10. In **Christopher Ndolo Mutuku & Another vs. CFC Stanbic Bank Ltd (2015) eKLR**, the Court observed that;

“...what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

11. In **Re Global Tours & Travel Ltd HCWC No. 43 of 2000** quoted with approval in **Mukunya Mugo 'A' & another v Elizabeth Mugure Mukunya [2019] eKLR**, it was stated as follows;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

12. A cursory perusal of the applicant's supporting affidavit indicates that the applicant is riding on the injunctive and inhibition orders issued by the court on 13.5.2019 in this suit. However, the injunctive orders of 13.5.2019 were only issued on temporary basis pending the hearing of the application. The application was never heard. Instead, it was settled on same terms on 9.7.2019 where status quo was to be maintained until further orders were given by the court.

13. However, a look at his annexure “DK 1” the plaint in the Githongo matter reveals that, that suit was filed on 14.1.2019 long before this suit was filed. The applicant also filed his statement of defence on 11.3.2019, again before he filed this suit.

14. The question is, why has the applicant filed this application just when the judgment is about to be delivered in the Githongo matter?

15. In the case **Ezekiel Mule Musembi v H. Young & Company (E.A) Limited [2019] eKLR**, the court stated thus;

“Obviously the decision whether or not to grant stay of proceedings being discretionary, the application must be made without unreasonable delay. Whereas I agree that delay is neither the sole factor nor the predominant factor to be considered, I am convinced that delay is a factor that ought to be taken into account.”

16. The applicant is mute on why he has come to court more than 2 years after the suit in Githongo was filed, yet he was aware of that suit from its inception. The overall impression the Court makes out of the total sum of the circumstances of this case do not arouse compulsion in favour of the applicant. See *Christopher Ndolo (supra)*. I am in agreement with the respondent that the application has been filed late in the day. I decline to exercise this court's discretion in favour of the applicant.

17. The application dated 4.2.2021 is hereby dismissed with costs to 1st respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 13TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Kaunyangi holding brief for Gichunge for the applicant

Kamau Nyaga for the respondent

HON. LUCY. N. MBUGUA

ELC JUDGE