



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. 17 OF 2017**

**M'INOTI NTHAL.....APPELLANT/APPLICANT**

**VERSUS**

**NAOMI KAREGI M'IMANYARA**

**(Legal representative of ELIJAH M'IMANYARA.....RESPONDENT**

**RULING**

1. Before me is a notice of motion dated 8<sup>TH</sup> January 2021 brought pursuant to Section 1A, 1B, and 3A of the Civil Procedure Act, Order 40 rule 1 of the Civil Procedure Rules 2010 and Article 159 2(d) of the Constitution of Kenya. The applicant seeks the following orders;

1) Spent

2) Spent

3) Spent

4) *That pending the hearing and determination of NYERI CIVIL APPEAL NO. 185 of 2020, this court be pleased to issue an order of temporary Injunction restraining the Respondent by herself, her servants and/or agents, and members of her family from evicting, entering or in any way interfering with the applicant's use and occupation of land reference NO. ABOTHUGUCHI/KATHERI/734 now land reference NO. ABOTHUGUCHI/KATHERI/5347 and 5348*

5) *Cost of the application.*

2. The application is based on the grounds of the face of it and on the supporting affidavit dated 08/01/2021 of the applicant. He avers that he was dissatisfied with the judgment delivered on 31<sup>st</sup> October, 2019 and therefore, he preferred an appeal in the Court of Appeal at Nyeri Appeal No. 185 of 2020. He avers that he has a good appeal and he should be given a chance to prosecute it as his chances of success are very high. He contends that during the pendency of the case in the lower court, the court had ordered a temporary injunction restraining the respondent from interfering with the use and occupation of half of the suit land and he remained on the land and developed it.

3. He further averred that on 18/12/2020 goons instructed by the respondent trespassed on his portion of the suit land and sprayed his crops. He reported the matter to Githongo Police station vide OB No. 15/18/12/2020 and now the respondent wants to throw him out of his portion and destroy his property. If the orders sought are not granted he stands to suffer irreparable damage, yet the respondent will suffer no prejudice.

4. The Application is opposed via the replying affidavit dated 12/02/2021 of Florence Kirumba, who averred that the applicant's application and purported appeal are manufactured to delay the realization of the judgment of the lower court and the one of this court which were determined in her favor. That the applicant has filed endless suits in an attempt to delay justice and the issues to be raised in the appeal were already raised and conclusively dealt with in ELC Court of Appeal 154/2011 and Meru Succession 50/1996.

5. She averred that it was the applicant who entered into the suit land and wants to evict her sister and herself, the applicant is determined to frustrate them. Additionally her sister and herself are the ones in occupation of the suit land and they are the ones who are utilizing the land, his appeal has no chances of success and the applicant will not suffer any loss as he is not the one in occupation. The applicant is also bringing this application 2 years too late and his application is unmeritorious and should be dismissed with costs.

6. During the hearing of the application, it was argued for the applicant that the matter is pending appeal and the applicant stands to forcibly

be removed from the suit land unless the orders are granted. He contends that his appeal is not frivolous and that it is necessary to preserve the suit land. He relied on the case of **Equip Agencies Limited V 1&M Bank Limited [2017]eKLR.**

7. For the respondent, the arguments raised captured the averments set out in her replying affidavit. It was further stated that the applicant's sole intention is to delay the case and to prevent the respondent from enjoying the fruits of her judgment.

8. I have carefully considered all the issues raised herein. To grant or not to grant the injunction pending the determination of the appeal is the primary issue for determination.

9. This court has already rendered its judgment. It follows that this is not the forum for the applicant to advance his claim that his appeal in the Court of Appeal has high chances of succeeding. Further, this is a situation whereby the judgment of this court was delivered way back on 28.10.2019. Thus the court is no longer seized of the dispute relating to the suit land, See **Bartholomew Mwanyungu & 3 others v Florence Dean Karimi [2019] eKLR.**

10. I find no merits in the application, which is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 5<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Soi for respondent

M/s Atieno for applicant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**