



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO. 24 OF 2019

IN THE MATTERS OF ARTICLES 10, 28, 40, 43 (1B), 47, 48, 60, 67 OF THE CONSTITUTION

AND

IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS AND DENIAL OF THE RIGHT TO FAIR ADMINISTRATIVE ACTION

AND

IN THE MATTER OF THE RESETTLEMENT OF THE NTIRIMITI SUBUIGA SQUATTERS

BETWEEN

MUGAMBI M'IMUNYA (Suing on his own behalf

and on behalf of NTIRIMITI SUBUIGA SQUATTERS TRUST)..... PETITIONER/APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The petitioners/applicants have sought an order that leave be granted to enter interlocutory judgment against the respondents in default of entering appearance. The application which is dated 15.11.2019 is brought under order 1 Rule 20 of the Civil Procedure Rules. The said rule provides as follows:

“No judgment against Government without leave of the Court.

(1) A defendant shall not in any event be entitled to enter judgment against the Government under rule 19 without the leave of the court.

(2) Any application for leave to enter judgment against the Government under this rule shall be made by chamber summons served not less than seven days before the return day”.

2. The 2nd respondent filed their grounds of opposition on the 10th February 2020. I note that these grounds of opposition are a response to the petition itself. The submissions thereof are basically arguments in support of those grounds of opposition. Likewise, the petitioner's submissions are anchored on the merits of the petition and not the application.

3. The parties herein have missed the mark. What was before this court for determination is the petitioner's application for leave to enter interlocutory judgment against the respondents. None of the parties submitted on this issue. The parties have delved into the merits of the petition itself at this early stage.

4. In the interest of justice, this court will still proceed to determine the merits of the pending application.

5. The legal platform in which interlocutory judgment is anchored on is to be found under **Order 10 Rule 6 of the Civil Procedure Rules**

where it is stipulated as follows;

“Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be”.

6. In the case of Beatrice Wanjiru Kamuri v John Kibira Muiruri [2016] eKLR, the court stated that;

“It will be seen from the above that the claim in our case, being a claim for land, does not qualify for entry of interlocutory judgment, and as I have mentioned earlier, that was the reason why no interlocutory judgment was entered for the plaintiff when she applied for the same but instead, the plaintiff was granted a hearing date with the stipulation that she serves notice of the same upon the defendant”.

7. A perusal of the orders sought in the petition reveals that this is a land matter which does not meet the threshold for entry of interlocutory judgment. In the circumstances, the application dated 15.11.2019 is hereby dismissed with no orders as to costs.

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

C/A: Kananu

Otieno C. for petitioner

Petitioner

HON. LUCY. N. MBUGUA

ELC JUDGE