



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC NO. 104 OF 1999

STEPHEN KUNGUTIA.....1<sup>ST</sup> APPELLANT

JAMES MUTURIA.....2<sup>ND</sup> APPELLANT

NAHASON M'LAIBUTIA.....3<sup>RD</sup> APPELLANT

VERSUS

SEVERINA NCHULUBU.....RESPONDENT

RULING

1. This ruling relates to two applications. The one dated 2.8.2021 seeking for stay of execution and warrants issued on 16.4.2021 for the eviction of the applicant from **Parcel No's 767, 1186 and 960 Kigunchwa adjudication** in favour of the respondent. The application is based on the grounds in the face of it and a supporting affidavit sworn by the 3<sup>rd</sup> appellant pending hearing and determination of the application for trespass.
2. The second prayer is for the land registrar to avail the green cards, subdivision documents and any other document relating to **L.R No. Tigania East/Kigunchwa/1186 & L.R 960 Kiguchwa adjudication**.
3. The grounds of the application are on the face of the application and a supporting affidavit sworn by Nahashon M'Laibuta on 2.8.2021.
4. The grounds are that he lives on the **L.R No. 1186** which is ancestral land while **L.R No. 960** was bought from the respondent's late husband who has illegally consolidated it with L.R No. 1186 yet they are independent of each other and has now embarked on subdividing it. That a warrant to evict him has been issued dated 16.4.2021.
5. In the 2<sup>nd</sup> application the court is asked to review the conditional orders of stay of execution for a sum of **Kshs. 1,000,000/=** and in place a title deed for a similar value, be offered.
6. The application is supported by an affidavit sworn by the 3<sup>rd</sup> appellant who depones he has been unable to raise the ordered sum either by himself or friends and as a retiree he may not manage it. Further the 3<sup>rd</sup> appellant proposes to offer alternative land of equivalent value namely Tigania East/Kiguchwa/3049 as per attached copy of title deed and an accompanying valuation report.
7. By written submissions dated 8.11.2021 the applicant submits he has met the conditions under **Order 42 rule 6 (2)** as held in *Alhyeder Trading Co. Ltd -vs- Lucy Jepngetich Mibei [2016] eKLR, Visram Ramji Halai & Another-vs- Thorntom Turpin [1963] eKLR, Carter & Sons Ltd -vs- Deposit Protection Fund Board & Two Others (Unreported), Butt -vs- Rent Restriction Tribunal [1982] KLR 417, Housing Finance Company of Kenya -vs- Sharok Kher Mohammed Ali Hariji & Another [2015] eKLR, Stanley Karanja Wainaina & Another -vs- Ridon Anyangu Mutubwa [2016] eKLR, Salectica Ltd -vs- Gold Rock Development Ltd [2015] eKLR and Philip Chemwolo & Another -vs- Augustine Kubede [1982-88] KLR 103.*
8. The history of this matter is, the court made the judgment on 2.7.2010 upholding the lower court judgment in which the court had found the respondent as the rightful owner of the Parcel No. 960, nullified the allocation of **Parcel No. 762 and 1186** to the appellants and restrained the appellants from occupying the land.
9. The appellants appealed to the Court of Appeal and sought for the orders of stay which were declined by a ruling delivered on 17.2.2011 following which warrants of execution were issued on 8.10.2012.

10. A series of applications for stay were made dated 18.12.2012, 20.12.2012, 3.1.2013, 12.2.2013, 21.2.2013 and 15.4.2013.
11. By an application dated 4.11.2014 which was made in person, by the 3<sup>rd</sup> appellant he sought for the supply of documents as requested in the instant application.
12. Again, through an application dated 16.1.2020, the appellants sought for among other prayers, the setting aside of orders made on 13.8.2019 for eviction and restraining orders against the eviction.
13. As if that was not enough another application dated 19.2.2020 was filed seeking stay of execution which by a ruling delivered on 21.10.2020 was dismissed alluding to a previous one dated 20.1.2020 which had also been dismissed.
14. Having set the above record, it is common knowledge the appellants' appeal at the Court of Appeal was dismissed on 24.10.2013. Ever since the appeal was dismissed, the respondent has been trying to execute but a plethora of applications have been filed by the applicants.
15. In the instant application the ground for seeking stay is pending hearing of trespass case. There is no indication of the case number and before which court.
16. The respondent in his grounds of opposition dated 9.11.2021 has stated that there is no pending appeal at the Supreme Court of Kenya and hence there is nothing pending except the enforcement of the three pending decrees.
17. **Sections 1A and 1B** as read together with **Article 159 2 (b)** of the Constitution mandates the court to expeditiously dispose of matters and abhors endless litigation including abuse of the court process.
18. This is a classical case where the applicants while aware the appeal at the Court of Appeal was dismissed, have engaged the respondent and the court in endless applications.
19. In the premises, I find the two applications without merits. The same are hereby dismissed with costs.

File closed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Mburugu for Respondent

Njagi for Applicant

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**