



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL CASE NO. 72 OF 2007**

**SULEIMAN KARUGA NJOROGE.....PLAINTIFF/RESPONDENT**

**VERSUS**

**HENRY AMAI.....1<sup>ST</sup> DEFENDANT**

**JOSEPH CHACHA.....2<sup>ND</sup> DEFENDANT**

**AND**

**EUNICE CHEMUTAI CHELOGOI.....1<sup>ST</sup> INTERESTED PARTY /APPLICANT**

**MARY CHEPKURUL.....2<sup>ND</sup> INTERESTED PARTY /APPLICANT**

**RULING**

1. The Notice of Motion application dated **28<sup>th</sup> February 2019** by the interested parties herein do pray for orders that there be stay of execution of the ruling of this court delivered on the **31<sup>st</sup> January 2019** pending the determination of this application and that the said ruling be reviewed, varied and or set aside. They are further praying that they be enjoined as parties in this suit.
2. The application is supported by the grounds on the face of the application and the sworn affidavit of the 1<sup>st</sup> interested party as well as one Mary Kukui all sworn on the same date.
3. The gravamen of the application is that the 1<sup>st</sup> interested party is the registered owner of all that parcel of land known as **Nakuru /Kapsita /1133** as per the copy of the title annexed to her affidavit. That contrary to the ruling of this court dated 31<sup>st</sup> January 2019 the said land does not touch on land parcel number **Nakuru /Kapsita/1131** the subject matter of the dispute herein.
4. She avers that on the contrary her land is contiguous on the said disputed parcel of land and should the execution proceed she shall be prejudice as she will be evicted from the said parcel yet she is the registered owner.
5. She said that the registry map index produced does not explain the situation on the ground hence the ruling by the court ought to be reviewed. If effected, she went on, it shall amount to being evicted unheard hence her prayer that the court ought to review the ruling.
6. Mary Kukui in her affidavit does not dispute the fact that she has sold her land namely Nakuru /Kapsita. /1131 to the plaintiff and that she has all along been a neighbour of the interested party herein. That she already knew all along that the 1<sup>st</sup> interested party had constructed a house for the 1<sup>st</sup> defendant, her employee on the land.
7. Both applicants pray that they should be allowed to defend themselves as interested parties since they were not aware of the matter all along. That they shall suffer irreparable harm and loss should the execution proceeds.
8. The plaintiff/ respondent has denied the allegations by the applicants in his sworn affidavit dated 23<sup>rd</sup> April 2019 arguing that they were all along aware of the matter and that the court has long made a determination. That the applicants are strangers to him and he has no dispute with them.
9. The court directed the parties to file written submissions and it is only the plaintiff who apparently complied. Be it as it may the issue at hand is clear, simple and easy to understand.
10. The plaintiff has a decree against the respondents in respect to land parcel number Nakuru/ Kapsita /1131. He already has title in his

favour after the judgement of this court. At execution stage it appears that there was a dispute on the situation on the ground. The court directed that a joint survey exercise be undertaken which was actually done.

11. The court thereafter while relying on the said survey report delivered its ruling dated 31<sup>st</sup> January 2019 which directed that the judgement be performed. The 1<sup>st</sup> defendant was ordered to remove his structures on the ground which were in land parcel number Nakuru/Kapsita/1131.

12. This court does not find anything new to warrant a review of the already clear orders. If the plaintiff is the owner of the suit land as clearly found by the judgement of this court, then there is nothing new. The defendant should comply by moving out of the land.

13. The only rider and which perhaps the applicants have raised and may need to be considered when evicting or moving the 1<sup>st</sup> defendant out is to ensure that nothing is done on anything dealing with land parcel number Nakuru/Kapsita/1133 as it is not a subject of dispute herein. It is an independent parcel whether seven parcels of lands away or contiguous to Nakuru/Kapsita/1131.

14. Other than the above caution, the court does not see the need to disturb the findings of this court whether the original judgment or the order issued on 31<sup>st</sup> January 2019. There is as submitted by the plaintiff/ respondent sufficient evidence on record that the interested parties especially the 2<sup>nd</sup> was privy to the matter.

15. In the premises, the application is disallowed only to the extent that there is nothing new to review or set aside for now. The only rider is that the plaintiff or his servants and or agents should not trespass onto land parcel number **Nakuru/Kapsita/1133** as it never formed part of the proceedings herein or at all.

16. Each party shall bear its respective costs.

**Dated signed and delivered via video link at Nakuru this 23<sup>rd</sup> day of September 2021.**

**H K CHEMITEI.**

**JUDGE.**