



REPUBLIC OF KENYA



KENYA LAW

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Mwirichia v Gaiti & another (Environment & Land Case 118 of 1985)

[2020] KEELC 3990 (KLR) (12 February 2020) (Ruling)

M'nykanata Mwirichia v Stanley Gaiti & another [2020] eKLR

Neutral citation: [2020] KEELC 3990 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND CASE 118 OF 1985

LN MBUGUA, J

FEBRUARY 12, 2020

BETWEEN

M'NKANATA MWIRICHIA PLAINTIFF

AND

STANLEY GAITI DEFENDANT

AND

JULIANA KAIMURI RESPONDENT

RULING

1. The application before this court is the notice of motion filed on 29.4.19 for stay of execution of the judgement of this court delivered on 13.2.2019.
2. The application is supported by the grounds on its face and by the affidavit of one Mutuma M'Inoti (sworn on behalf of the other applicants (formally defendants).
3. The applicants contend that they were aggrieved by the judgement of this court hence they have lodged an appeal at the court of appeal. They aver that they are the registered owners of parcels No's 2198, 2199, and 2200 within Abothuguchi, Gaitu and that this is the land this court has ordered it be demarcated by a surveyor to the tune of 4 acres to be given to the respondent.
4. The applicants also aver that the suit was heard exparte and they were not heard. They aver that they stand to suffer irreparable loss as they have established their homes on the suit land.
5. The plaintiff/respondent had opposed this application vide his replying affidavit filed on 17.5.2019, where he avers that he has been in occupation of the 4 acres of land for a long time hence no irreparable loss will be occasioned unto the applicants.



6. The respondent also avers that applicants have not demonstrated a willingness to deposit security for costs. He also mentions that the suit has taken 3½ decades to conclude
7. I have considered all the issues raised herein. I find that the substantive law applicable is to be found under order 42 rule 6 of the civil procedure rules.
8. The applicants claim that they have established homes on the suit land. However, in my judgement, of 13.2.19, I found that plaintiff is in occupation and was entitled to 4 acres out of the suit land No. Abothuguchi/Gaitu/318. The court captured the status of this land in paragraph 29 of the judgement. In paragraph 30 of the judgment, I captured the orders issued by court geared towards the preservation of the suit land 318, which orders appear not to have been respected. Thus despite the alienation of parcel No. 318, the court did find that plaintiff occupies 4 acres thereof.
9. Considering the history of the dispute (as captured in paragraph 1 of the judgement) to the effect that litigation has been live for the last 35 or 50 years! I will grant a conditional stay as follows:-
 - 1) The plaintiff/respondent is to remain on the 4 acres of land.
 - 2) The suit land is not to be alienated.
 - 3) Each applicant is to deposit in court a sum of Ksh.500,000/= within 30 days from date of delivery of this ruling as security.
 - 4) The applicants shall not carry out any developments on the suit land.
 - 5) The stay of execution is to last a period of one year.
 - 6) In the event of noncompliance on the part of applicants in respect of clause 2, 3 and 4, the orders of stay shall lapse.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 12TH FEBRUARY, 2020.

IN THE PRESENCE OF:-

C/A: Kananu

Kimaita holding brief for Kaimba for Plaintiff/Respondent

Ashaba holding brief for Kaume for Defendant /applicant- present

Plaintiff present

Defendants – absent

HON. LUCY. N. MBUGUA

ELC JUDGE

