



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 42 OF 2019

BOTU CULTURAL GROUP.....1ST APPELLANT

BOTU SELF HELP GROUP.....2ND APPELLANT

Versus

SUB COUNTY DIRECTORATE OF CRIMINAL INVESTIGATION....RESPONDENT

AND

MOHAMUD ABDI KAWIR.....1ST APPLICANT

AMINA HASSAN HUSSEIN.....2ND APPLICANT

RULING

1. **Mohamud Abdi Kawir and Amina Hassan Hussein** (Herein the applicants) applied in an application dated 23rd May 2019 to be enjoined as interested parties and/or respondents in this appeal. They also applied for the setting aside, and review of Orders issued on 13th May 2019.

2. The application is supported by affidavits of the applicants and the grounds set out in the application to wit: (1) that they are the registered owners of Plot known as Isiolo Township Block 1/158 and Isiolo Township Block 1/160; (2) That this Honourable Court issued Orders on 13th May 2019 inter alia that the petitioners shall not be evicted from the suit land which is clearly prejudicial to the interests of the applicants who are the registered owners and who are in occupation. (3) That the said orders were issued without hearing the applicants and they are final in nature meaning the applicants have lost the right to the suit property completely.

3. They also aver that the applicants are using the orders to take possession of the suit property and to begin construction. They annexed copies of title deeds, copy of the Order and photographs of the appellant's building stones in readiness for the construction in support of their averments.

4. On 19th June 2019 this Court directed the Respondents to file replies to the Application and also gave directions on the filing of written submission. At the time of writing this Ruling only the Respondent had filed their submissions albeit late.

5. The Respondent argued that the applicants are not in occupation of the disputed plots as they claimed. According to them if that was the case, why have the applicants come to court seeking for their eviction? They demonstrated their assertion further by stating that they are facing charges of forcible detainer of these properties because they are in occupation. They therefore beseeched the court to vacate the orders of eviction herein for the orders deprive them of their claim permanently.

Of interested party

6. The Supreme Court, in the case of **Trusted Society Of Human Rights v Mumo Matemo & 5 others [2014]eKLR** , stated that:

“an interested party is one who has a stake in the proceedings though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

7. I also find great value in what Nambuye J. (as she then was) stated in the case of **Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002]eKLR** that:

“...the guiding principles when an intending party is to be joined are as follows:(1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.’

8. This appeal has been brought within the ambits of the Criminal Procedure Code and it raises issues relating to land ownership. I note that the appellants filed this appeal together with a notice of motion dated 25th February 2019. In the Motion, they sought this Honourable Court to suspend, stay or reverse the Orders made by the Chief Magistrate Court in Isiolo on 14th February 2019. The major argument stated in the Supporting Affidavit sworn by Mohammed Noor the chairman of the Appellants was that the group has been using Parcels No. 7918/392, 7918/393, 7918/394 and 7918/395 since the year 2010. That another person claimed ownership to the same and that he had a lease. That without being summoned to the court the group received orders from the DCIO on 17th February 2019 asking them to vacate the land.

9. On 13th May 2019 the Respondent Counsel Mr. Namiti told the Court that he will pursue the conclusion of the Criminal case i.e. Cr. No. 185 of 2019 at Isiolo but in the meantime the prosecution shall not evict the appellants/petitioner. The court thereafter made Orders as follows;

“On the basis of the undertaking by Namiti, I direct that the Isiolo Criminal Case 385 of 2019 to be prosecuted without delay. Meanwhile the petitioners shall not be evicted. All parties to assist in attaining the overriding objective.”

10. The applicants also seek to have the foregoing order set aside especially the part that prevents the eviction of the petitioners. That notwithstanding, I have looked at the proceedings that gave rise to this appeal. In the complaint and application made in the trial court the dispute relate to Parcels No. 7918/392, 7918/393, 7918/394 and 7918/395. **Olo Mohammed, Mr Anwar and Diba Hussein** claimed to be land owners of the said parcels of land. But the documents attached by the applicants the parcels of land in issue are parcel No. Isiolo Township Block 1/160 and Isiolo Township Block 1/159. I do not see any co-relation between these parcels of land and those that are subject of this appeal. It is worth of note that real property has its distinct description to isolate it from the others. The description must be precisely pleaded. Accordingly, there is nothing that makes the applicants necessary parties in this appeal. Therefore, I decline their request to be joined in this appeal. I dismiss the application dated 23rd May 2019.

11. However, despite the position I have taken on the application for joinder, I see serious matters have arisen herein; ownership and occupation of the disputed lands. Although these issues have been brought within Criminal Procedure, I firmly believe such matters should be properly evaluated in Environment and Land Court and or the trial court. I buttress the intention of the parties in the consent herein and now formally direct the trial court fast-track the hearing and determination of the criminal case herein. Meanwhile, it be known that the order not to evict the petitioners was meant to maintain the status quo at the time. It was not meant to enable a party to regain possession or occupation of or to develop the disputed lands. Occupation of the lands in question forms part of the issues at the criminal trial; notably the charge if of forcible detainer of property. As the trial proceeds, this appeal should also be heard and finalized immediately. I find it to be uncomplicated interlocutory appeal. Accordingly, I order the appellants to file and serve record of appeal in 7 days. Directions shall be on 22nd October 2019. It is so ordered.

Dated, signed and delivered in open court this 1st day of October, 2019

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F. GIKONYO

JUDGE

In presence of

Behailu for Mutuma for applicants

Igweta for Ondieki for respondents

Namiti for DPP – absent

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F. GIKONYO

JUDGE