



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. 82 OF 2011 (OS)**

**SAMUEL GIKUNDA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**BEATRICE MARIAM ISMAIL (Sued as the administratrix of the estate of**

**MUNYUA MIGUARI – deceased).....1<sup>ST</sup> DEFENDANT**

**ABDUL MWIRIGI MUNYA.....2<sup>ND</sup> DEFENDANT**

**PETER MEME.....3<sup>RD</sup> DEFENDANT**

**JACKLINE NKATHA JOHN.....4<sup>TH</sup> DEFENDANT**

**FLORENCE KANJA MWITL.....5<sup>TH</sup> DEFENDANT**

**SAMUEL MIRITI MUNYA.....6<sup>TH</sup> DEFENDANT**

**TITUS NKUNJA ISHMAEL.....7<sup>TH</sup> DEFENDANT**

**SERIBA KANGAL.....8<sup>TH</sup> DEFENDANT**

**AND**

**ABDULAI KIRIMI MUNYAU.....APPLICANT/PROPOSED**

**DEFENDANT/INTERESTED PARTY**

**RULING**

1. The application dated 29.1.2020 is brought under the following provisions of law:

***“Article 50 (1) of the Constitution of Kenya 2010, Section 1A, 1B and 3A of the Civil Procedure Act, order 45 rule (1), Rule (2) and Rule (3) of the Civil Procedure rules and all other enabling provisions of the law”.***

2. The applicant, one Abdullai Kirimi Munyua is seeking to be enjoined in this suit as an interested party or defendant and the court to grant orders of stay execution, review and set aside the judgment dated the 23.2.2018 and the orders issued and dated 13.11.2019, and that the OCS Timau police station be prohibited from evicting the applicants until this suit is re-heard and determined. The applicant therefore desires that there be a afresh hearing of the suit and he be granted 21 days leave to file a response to the suit and that costs be provided for.

3. The grounds in support of the application are set out on the face of the application and in the affidavit of the applicant, where he contends that he is the owner of land parcel No. Timau/S. Scheme/1188 where he has lived since 1995. He avers that the OCS Timau police station has given him a copy of a court order whereby he is supposed to vacate the suit land. He contends that he has discovered that plaintiff went to court claiming his land via adverse possession yet he was never informed about the court case, nor was he made a party in these

proceedings. He therefore avers that he has a right to be heard.

4. The applicant has availed several documents in support of his claim. These include a title deed of the suit land, a search certificate, the judgment of the court, the order of 4.12.2019 and several photographs.

5. The plaintiff/respondent has opposed the application via his replying affidavit filed in court on 18.2.2020. He contends that when he commenced the suit, Meru ELC No. 82 of 2011, all the parties living on the land were aware of the case and were duly served with summons to enter appearance. He avers that he bought the land in 1987 and he has been living on the suit land since then. He has already obtained a title to the land on 20.2.2019. The respondent further states that applicant's mother was involved in these proceedings.

6. I have weighed all the issues raised herein. The issues for determination are whether the applicant should be enjoined in this suit as an interested party, whether the court should grant a stay of execution of the judgment and orders of 13.11.2019 and whether the matter should be heard afresh.

7. **Order 1 Rule 10(2) Civil Procedure Rules** provides as follows:

***“ The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.***

8. A party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty. In **Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002] eKLR** Nambuye J as she then was, provided the guiding principles to be adhered to when an intending interested party is to be joined in a suit 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”.***

9. The applicant herein is apparently the owner of the suit parcel No. 1188. The orders issued by this court on 13.11.2019 clearly show that his presence is necessary in order to enforce the court's judgment. I am therefore inclined to allow prayer 2 in the application to the effect that the applicant is enjoined in these proceedings as an interested party.

10. On the issue of stay of execution, I find that judgment herein was delivered on 23.2.2018 while the orders of eviction were issued on 13.11.2019. The applicant contends that he was never made a party to the proceedings yet he is the owner of the suit land. The records of the court indicate that the original suit land was parcel No. 128 which was subdivided sometime in 2011 to give rise to several resultant parcels including the suit land no. 1188. This suit was filed on 21.6.2011, while the applicant obtained title to the suit land three months later on 14.9.2011. The applicant obtained this title from the 1<sup>st</sup> defendant herein (Joyce Ncee John Beatrice Miriam Ishmail).

11. From the above mentioned facts, it is clear that the applicant did not have a title to the suit land by the time the suit was filed. The suit land was alienated in his favour during the subsistence of the suit by Joyce who appears to be a close family member. The applicant cannot therefore claim that he was not aware of the proceedings.

12. In the circumstances, I find that the prayer for stay of execution and for setting aside of the judgment is not merited.

**Final orders;**

13. The Applicant is hereby enjoined in the suit as an interested party but all his other prayers are dismissed with costs to plaintiff/Respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

