



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO.108 OF 2019

WILSON MWIRIGI MANYARA.....1ST APPELLANT

M'IMANYARA M'MURITHI.....2ND APPELLANT

VERSUS

MOFFAT GICHURU MANYARA.....RESPONDENT

RULING

1. This ruling is in respect of the application dated 21.1.2020 where the applicant (Moffat Gichuru) is seeking an order of stay of execution of the judgment delivered on 16.1.2020 pending the determination of an appeal. The applicant also prays for an order of inhibition in respect of parcel no. L.R No. Abogeta/U-Kithangari/2514.

2. The grounds in support of the application are set out on its face and on the affidavit of the applicant. The applicant contends that he has initiated the process of appeal yet the respondents are likely to dispose off the suit land. He contends that he has been in actual possession and occupation of the suit land of which the court in ELC no.15 of 2019 had found that he has equitable rights on the suit land.

3. Applicant avers that in the interest of justice, his application should be allowed.

4. The respondents have opposed the applications vide the replying affidavit of Wilson Mwirigi, the 1st respondent. The respondents aver that indeed the land is set to be subdivided hence the mutation and that this is geared towards ensuring that all the children get their pieces of land and that the portion due to appellant is not being interfered with.

5. It is also contended that the intended appeal is res-sub judice to Meru PMCC no. 15 of 2019 and that this court is now functus official.

6. The applicant has further responded to the claims of the 1st respondent in a rather lengthy affidavit where he is generally asserting his claim to the land.

7. On 26.2.2020 the advocates for the parties urged the court to give a ruling based on the filed affidavits.

8. Ordinarily order 42 rule 6 would have been the guiding legal platform in matters “*stay of execution*”. However the intricate nature of the dispute is captured in paragraph 25 of this court’s judgment of 16.1.2020. This is a situation whereby the applicant sought to have a second bite of the cherry irregularly by filing Nkubu PM ELC no.15 of 2019 after losing in Meru ELC no. 54 of 2015. The granting of the orders sought herein would in essence render the orders given in Meru ELC 54 of 2015 superfluous. Having pronounced itself way back on 9.5.2018 in Meru ELC No. 54 of 2015 as far as the dispute between the parties is concerned, this court cannot now purport to grant orders to forestall its own orders given more than 2 years ago.

9. The upshot of my findings are that the application is not merited. The same is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MERU THIS 21ST 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 17th March, 2020 and published in the Kenya Gazette of 17th 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

ELC JUDGE