



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 10 OF 2019**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF MERU CMCC NO. 37 OF 2014 (ELC)**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CHIEF MAGISTRATE COURT, MERU LAW COURTS .....RESPONDENT**

**AND**

**ISAYA M’KIRERA M’ KIAMBATI.....INTERESTED PARTY**

**EXPARTE APPLICANT .....JOHN MUTUMA M’IKIAO**

**RULING**

1. The ex-parte applicant filed his substantive application on 6<sup>th</sup> June 2019 seeking that the Order dated 13/3/2019 issued in **Meru CMCC No. 37 of 2014 (ELC)** be removed into this Honourable Court and be quashed.
2. The application was supported by the verifying affidavit and statement of facts of the exparte applicant. He averred that he is in actual and active possession of L.R. No. Abothuguchi/Katheri/1195, registered in the name of Kiunga s/o Kirera and has been in such possession for over 12 years as a result of which he filed **Meru H.C. ELC Case No. 302 of 2017** pending for judgement on 15/5/2019.
3. That the ex-parte applicant has since been served with an injunction Order dated 13/3/2019 in Meru CMCC No. 37 of 2014, of which he has never been invited to participate in at any stage thereof and that the court file is missing. He contends that the order is against his right of possession which is awaiting the courts judgement. That the applicant having not been invited to defend his rights, the order is against the rules of natural justice.
4. The interested party opposed the application through a replying affidavit dated 24<sup>th</sup> June 2019. He averred that he sued his brother **Kiunga**, who had defrauded him the suit land in **Meru CMCC No. 37 of 2014**. That his brother filed defence and counterclaim in the suit, where he admitted that the interested party and his daughter Evangeline were in occupation of the suit premises. That he defeated his brother as per decree dated 13/7/2017. His brother appealed and he defeated him again as per judgement of 3/10/2018.
5. That the ex-parte applicant on 17/11/2016 colluded with his brother, trespassed and damaged his property. The interested party warned him through a letter dated 22/11/2016 which was replied through a letter dated 24/11/2016 but the same did not state that the applicant occupies the suit premises.
6. That on 13/3/2019 he obtained the impugned order after the said **Kiunga** and the ex-parte applicant being his agent, colluded to grab his land given his advanced age of 92 years. That on May 2019, Kiunga and the ex-parte applicant colluded again and sued him before Njuri Ncheke. He challenged the matter vide a letter dated 21/5/2019 and they stopped.
7. On 26/11/2019 this court directed the parties to file written submissions, with strict instructions as follows; **“The applicant to file and serve their submissions and any further affidavit (if need be) by 10.1.2020 failure to which this matter shall stand as dismissed. The respondent and the interested party to file and serve their submissions by 10.2.2020 failure to which such submissions shall stand as expunged from the record”.**

8. The respondent did not file any submissions. The interested party filed his submissions in time on 7.2.2020. The ex-parte applicant filed his submissions on 27.1.2020 outside the given time-lines. The reasons advanced by the ex-parte applicant were that they had not been served with any response by the respondent.

9. However, as rightly pointed out by the interested party, this suit stood as dismissed at the close of business on 10.1.2020. There was no direction made by this court to the effect that the ex-parte applicant was to file their submissions only after being served with the response from the respondent. In light of the foregoing, there is no suit before me for trial. This matter stands as dismissed with costs to the interested party.

10. I have noted that the applicant's claim is based on rights of occupation of land through the doctrine of adverse possession. To this end, he did file a suit MERU ELC NO. 302 of 2017 of which judgment was delivered by this court in his favour on 15.5.2017. However, vide a ruling of 16.4.2020, the said judgment was set aside so as to bring on board the current interested party which means that the suit ELC 302 of 2017 is now fresh. The parties should therefore endeavour to litigate their issues in that suit. This file is marked as CLOSED.

**DATED, SIGNED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF JULY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given on 24.6.2020 in the presence of counsels for all the parties. 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**

**ELC JUDGE**