



**REPUBLIC OF KENYA**

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

**ELC APPEAL NO. 104 OF 1999**

**STEPHEN KUNGUTIA.....1<sup>ST</sup> APPELLANT**

**JAMES MUTIRIA.....2<sup>ND</sup> APPELLANT**

**NAHASHON THARUIYA M'RAIBUTA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**SEVERINA NCHULUBI.....1<sup>ST</sup> RESPONDENT**

**RULING**

1. Vide a notice of motion dated 19.02.2020, the applicant (3<sup>rd</sup> appellant) is seeking orders of a stay of execution of the judgment dated 7.6.2012 and decree dated 2.7.2010 and an order to stop his eviction from parcel No. 1186 Kiguchwa Adjudication Section. The grounds in support of this application are that;

- 1) "The applicant is the sole registered owner and/or proprietor of Tigania East/Kiguchwa/1186 which is a clan land and is one of the subject matter of this case.**
- 2) LP NO.1186 Kiguchwa Section now registered as Tigania East/Kiguchwa/1186 is independent of LP NO. 960/Kiguchwa Adjudication and was never excised therefrom.**
- 3) LP No 1186/Kiguchwa Adjudication Section was wrongly, illegally and maliciously dragged into this case without permission, consent and/or knowledge of the applicant and none of the parties in this suit has vested interest over it.**
- 4) That by demanding or ordering the applicant to vacate therefrom is wrong, illegal and irregular."**

2. The applicant has also filed a supporting affidavit where he contends that parcel 1186 is family land which is independent of parcel 960 which was wrongly and inadvertently dragged by the respondent into this litigation mistaking it for parcel 2952. He contends that he has been served with an eviction notice dated 3.8.2019 requiring him to vacate parcel no. 1186.

3. In his replying affidavit dated 13.7.2020, the respondent has given a detailed account of the litigation history between the parties. The respondent had sued the appellants in Maua CMCC No.85 of 1997 where she was claiming ownership of parcel 960 which had been subdivided to create parcels 762 and 1186. The appellants appealed in the High Court Meru Civil Appeal No. 104 of 1999 where they (appellants) lost the case. They proceeded to Court of Appeal in Nyeri C.A No 221 of 2010 where again they (appellants) lost the case.

4. I have considered all the issues raised herein. I find that on 16.01.2020, the applicant had filed another application to prevent his eviction from parcel 1186. That application was presented before me on 20.01.2020 whereby I gave directions for the application to be served for inter-partes hearing on 10.2. 2020 and failure to serve would attract a dismissal of the same. Come 10.02.2020 and the applicant informed the court that the application had not been served. The court then proceeded to dismiss the application and the file was closed.

5. It is therefore an abuse of the process of this court for the applicant to simply file another similar application.

6. Secondly, I find that the issue of litigation of parcel No.1186 is well captured in the decisions of various courts, including the Court of Appeal. The applicant cannot revisit that litigation through this application.

7. In the circumstances, I find that the application dated 19.02.2020 is incompetent and unmerited. The same is hereby dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF OCTOBER, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 15.7.2020. 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**