

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 41 OF 2020 AND ELC NO.42 OF 2020

DANIEL KIRIMI MUTUA & ANOTHERPLAINTIFFS

VERSUS

PATRICK KAMENCHU ROBERT AND 2 OTHERS.....DEFENDANTS

RULING

1. The aforementioned two files were consolidated on 5.11.2020 upon application by the applicant which was not opposed by the respondent. On the same date, the court gave directions for the applications filed on 14.09.2020 to be heard by way of written submissions and the matter was given a mention date on 16.02.2021 to confirm the filing of submissions and to give a date for ruling. Meanwhile the applicant sought for interim orders of mandatory injunction to put back the plaintiffs in the suit premises. The reason being that the plaintiffs were wrongfully and illegally evicted, that defendants have received rent up to 31.12.2021 in file No. 41 of 2020 and up to 1.09.2022 in file No. 42 of 2020, and that defendants have started to paint the premises. In the alternative, the applicants seek conservatory orders for maintenance of status quo so that the premises are not let out to anyone.

2. The Respondents opposed the prayers sought averring that the orders sought are contradicting the orders given by Judge Oginjo in the succession case No. 302 of 2010, where eviction orders were issued. It is also contended by the Respondents that the same parties have another case No. 43 of 2020 in Meru High Court and hence the issues of duplicity may arise.

3. A further response by the applicant was that the eviction was done maliciously over lunch hour.

4. In the case of **Lucy Wangui Gachara vs. Minudi Okemba Lore (2015)eKLR**, the Court of Appeal cited the case of **Bharat Petroleum Corp Ltd vs Haro Chand Sachdeva, AIR 2003** where it was held that;

“While Courts power to grant temporary mandatory injunction on interlocutory application cannot be disputed, but such temporary mandatory injunctions have to be issued only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship. If a mandatory injunction has to be granted at all on interlocutory application, it is granted only to restore status quo and not to establish a new state of things.”

5. If this court was to grant the orders sought at this stage, this would in essence amount to granting a major part of the relief sought in the main suit. A mandatory injunction ought to be given only in the clearest of cases. The respondent has contended that the eviction orders emanated from the orders of Judge Oginjo in a succession case. Indeed a perusal of the pleadings of the applicants reveals that the eviction of the plaintiffs have a nexus with the succession case. It is also alleged that the eviction was done in contravention of a high court order dated 14.2.2019. This court is not seized of what transpired in the aforementioned suits at this stage. This is therefore not a clear and simple matter to grant a mandatory injunction before the hearing of the applications.

6. In the circumstances, I decline to grant any orders at this stage.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF DECEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given via a notice dated 7.12.2020. 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 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