



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 109 OF 2001

SOLOMON MUATHE MITAU & 787 OTHERS.....PLAINTIFFS

VERSUS

NGUNI GROUP RANCH.....DEFENDANT

RULING

1. In the Notice of Motion dated 4th July, 2018, the Plaintiffs/Applicants are seeking for the following orders:

a. That this Honourable Court be pleased to stay the execution of the court's order dated 18th January, 2018 for a period of six (6) months to allow parties negotiate an amicable settlement of this dispute.

b. That this Honourable Court be pleased to make such orders as may appear to be fit and convenient to meet the ends of justice.

c. That the costs of this Application be in the cause.

2. The Application is premised on the grounds that the Applicants claim for adverse possession was dismissed by the court; that the Respondents have been unable to enforce the orders of the court due to the high population of the people on the land and that the local community leaders are trying to find an amicable solution to resolve the dispute.

3. In reply, the Chairman of the Respondent deponed that the Applicants' Application is hopeless and an abuse of the court process; that the Applicants did not respond to the Application for eviction; that no proposal has been made by the Applicants on settling the dispute herein and that the Respondent is entitled to the fruits of its Judgment.

4. Both the Applicants' and the Respondent's advocates filed submissions which I have considered.

5. The Applicants herein commenced this suit by way of an Originating Summons. In the said suit, the Applicants sought to be declared the proprietors of land known as Ikutha/Nguni/1 by way of adverse possession. After hearing the parties herein, the High Court dismissed the Applicants' claim vide a Judgment dated 27th May, 2009.

6. After the dismissal of their suit, the Applicants lodged an Appeal, being Nairobi Civil Appeal No. 102 of 2014. That Appeal was dismissed on 3rd March, 2017.

7. The Applicants now want this court to stay the enforcement of the orders of this court and the Court of Appeal "*for a period of six (6) months to allow parties negotiate an amicable settlement of the dispute.*"

8. The period of six (6) months that the Applicants had requested for from the time the Application was filed has since lapsed. Hopefully, they managed to negotiate and arrived at an amicable settlement of the dispute with the Respondent.

9. Even if the period requested for by the Applicants to negotiate the dispute with the Respondent had not lapsed, the prayer sought by the Applicants would not have been granted by the court. I say so because this court and the Court of Appeal having determined the dispute, an order of stay of its decision for eviction of the Applicants cannot issue.

10. Indeed, the order of stay of execution of the decision of the court pending "*negotiations between parties*" is not only provided for in the law, but would amount to this court sitting on its own Appeal and on Appeal of the Judgment of the Court of Appeal. Such a mandate is not available to this court.

11. The Court of Appeal having given the final decision on the issue of proprietorship of the suit land, the Applicants have no other remedy

known in law allowing them to stay on the suit land. They have to give way and bring this litigation to an end.

12. For those reasons, the Application dated 4th July, 2018 is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24TH DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE