



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL CASE NO. 58 OF 2019

AMIN MOHAMED KHAN.....APPELLANT

VERSUS

MARY MWONJARU CECILIA..... 1ST RESPONDENT

ISAIAH MITHIKA IKIAO..... 2ND RESPONDENT

DANIEL KAILANYA.....3RD RESPONDENT

RULING

1. The application dated 11.4.2019, seeks the following orders;

(i) Spent.

(ii) That the honourable court be pleased to restrain the 1st, 2nd and 3rd respondents whether by themselves, their agents or anyone acting on their behalf from constructing, use or in any other manner from interfering with the appellants quiet occupation, possession and use of land registration No. Tigania/Antuamburi/6388 measuring approximately 0.21 acres pending inter-parte hearing of this application.

(iii) That the honourable court be pleased to confirm prayer 2 above until this appeal is heard and finalized.

(iv) That the appellant do bear the costs of this application.

2. The grounds in support thereof are that;

(a) This application has been brought without unreasonable delay.

(b) It is the plaintiff/appellant who is in occupation of the suit land and he has his titles of the same.

(c) That he filed the lower court case and prayed for restraining orders which were refused hence this appeal.

(d) That there is double registration over the same land.

(e) Article 159 (2) (D) of the constitution was introduced in the new constitution as a remedy when the procedures became "TOO RIGID".

(f) If this injunctions is not allowed there will be chaos on the ground/applicant will become landlocked.

3. There is a supporting affidavits of the applicant filed on 11.4.2019 where he has deponed that;

On 4th April, 2019 the magistrate at Tigania dismissed his application dated 24th December 2018 without giving any proper reason as to why he dismissed his application, that his affidavit, their annexures and submissions were not considered, that the ruling was based on extraneous findings and that his appeal had high chances of success.

4. He also argues that the application has been made without unreasonable delay and that he is willing and ready to abide with the orders of this court until when his appeal is heard and determined. He also states that his application is urgent since the respondents have dug a big

trench across his gate thus he and his extended family cannot access their houses.

5. The application was served but no response was availed.

6. I have perused the ruling in PMCC Tigania 174/2018 where it is indicated that applicant has a title to the suit land but so does the respondent and that the respondent's title was even older. It is on that ground that the trial court stated that a prima facie case had not been established. No other issues are captured in the ruling.

7. The applicant has not availed documents which he says were ignored by the magistrate including his affidavits and submissions.

8. It was incumbent upon the applicant to give full disclosure of the issues that were before the magistrate's courts including the initial application and the subsequent application for review.

9. I note that the matter was filed before the Tigania court in 2018 which means that it is at the infancy stage. I hesitate to grant any orders which may have the effect of chocking the prosecution of the lower court case yet this is not the trial court.

10. The application is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 22ND MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Ogoti for applicant

M.G Kaume for respondent

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE