



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 46 OF 2019

JOEL KILAMBU.....1ST APPELLANT

PATRICK MWITI.....2ND APPELLANT

JOSHUA KIMATHI.....3RD APPELLANT

VERSUS

SHADRACK NKUBITU MUGWIKI.....RESPONDENT

RULING

1. The appellants were the defendants in Tigania PMCC 98 of 2011 where vide a ruling of 31.1.2019 they lost their bid to defend that suit. They therefore filed a memorandum of appeal contemporaneously with an application for stay of the Tigania court's ruling. The application was filed in this court on 21.3.2019 and it was given a date for hearing on 8.4.2019. On 8.4.2019, the court was told by respondent's counsel that execution had taken place. The matter was put off to 13.5.2019 when applicants were expected to be in court and evidence of eviction was to be availed by respondents.

2. On 6.5.2019, applicants filed another application seeking orders to have the OCS Mikinduri to be directed to visit the suit land and to file a report of the situation on the ground before 13.5.2019. This application was scheduled for hearing on 13.5.2019.

3. On 13.5.2019, the court was informed by applicant's counsel that the applicants were still on the land. The court directed the executive officer of this court to visit the scene and file a report regarding ***"who is in occupation of the land"***. The court gave directions for the matter to be heard on 8.7.2019.

4. On 8.7.2019, it emerged that applicants had been evicted on 10.5.2019. Counsel for the applicant averred that the scene visit was no longer necessary because eviction took place. She however averred that the court was misled on 8.4.2019 by the respondents and hence applicants should be reinstated back on the land.

5. Counsel for respondent avers that no formal application has been made to have the applicants reinstated back on the suit land. The counsel for respondent further stated that the court was not misled on 8.4.2019 and on 13.5.2019, and that it is applicant's counsel who misled the court on 13.5.2019.

6. I have keenly perused the record and I have weighed all the arguments raised herein. The application brought forth by the applicants on 21.3.2019 was for stay of execution of the lower court's ruling pending appeal. It is paramount that during the prosecution of such an application, the parties ought to give disclosure on the status quo.

7. On 8.4.2019, counsel for the respondent addressed the court as follows:

"Execution has taken place and I can avail the warrants" .

8. On 8.7.2019 counsel for the respondent further stated follows: ***"It is Miss Gachango who then misled court on 13.5.2019 by stating that appellants were on the suit land yet they had been evicted 3 days earlier on 10.5.2019"***.

9. True, the counsel for applicant had misled the court on 13.5.2019 stating that their clients were still on the land yet they had been evicted, while the said counsel was mute on the status quo appertaining as at 8.4.2019.

10. However the misrepresentation of the true state of affairs by respondents counsel made on 8.4.2019 had the effect of fundamentally changing the landscape of the dispute.

11. The said counsel for respondent has clearly stated that eviction took place on 10.5.2019 which means that they misrepresented the true state of affairs on 8.4.2019 and out of such misrepresentation, the applicants were evicted far much later.

12. In **Meru Succession Case no. 720 of 2013 Priscilla Ndubi & another vs Gerishon Gatobu Mbui**, Gikonyo J had this to say on matters of disclosure;

“Needless to state that in any Judicial proceedings, parties must make full disclosures to the court of all material facts to the case.....”

13. The respondents distorted the facts regarding the status quo as appertaining to the suit land on 8.4.2019 and they ought not to be allowed to get away with it.

14. In the circumstances I direct that the parties revert back to the position they held as at 8.4.2019 which means that applicants should go back to the suit land until the application for STAY is heard and determined.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 18TH DAY OF JULY, 2019

IN THE PRESENCE OF:-

C/A: Kananu

C.P Mbaabu for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE