



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 65 OF 2009 (OS)

HILLARIONE KABUTENI.....1ST PLAINTIFF/APPLICANT

MARGARET KABUTENI.....2ND PLAINTIFF/APPLICANT

VERSUS

GERGE KIRUKI MWAMBA.....1ST DEFENDANT/RESPONDENT

MUKETHA MUNGANIA.....2ND DEFENDANT/RESPONDENT

RULING

1. In the application dated 13.12.2018, defendants/applicants are seeking orders of eviction of the plaintiffs/respondents from L.R No. Ntima/Igoki/1720. The provisions of law cited are section 3 and 3 (a) of Civil procedure Act. The grounds in support of the application are that the suit was dismissed on 27.9.2019 but the respondent continued to remain on the land.
2. The application is opposed vide the replying affidavit of 1st plaintiffs where it is averred that the applicants did not file any counter-claim, that the application is time barred and is res-judicata.
3. I have considered all the arguments raised herein as well as the submissions of the parties. It is not in dispute that plaintiffs are the ones who filed the suit vide the Originating Summons on 25.5.09 seeking entitlement to land parcel no. LR Ntima/Igoki/1720 by way of adverse possession. The case was dismissed on 27.9.2017 due to non-attendance of both plaintiffs. Efforts made to revive the suit were futile.
4. Defence side avers that having dismissed the suit the court ought to have ordered the plaintiffs to vacate the land “*Suo moto*”. It was further submitted that where people who claim adverse possession fail in their bid to secure the land, the courts have always ordered them to vacate the suit land within 6 months. On this point the case of **Meru H.C.C No. 102/12 Edward Mugambi Kairanya vs Jason Mathu Mwongera** was cited by the applicant.
5. The plaintiffs on the other hand have submitted that the application is bad in law as the same is not based on any pleadings or judgment of the court. The plaintiffs have tendered rather lengthy arguments touching on the merits of their claim.
6. The starting point is that **THERE IS NO SUIT!** This case died and was not reinstated. On what basis would the court then be issuing the orders sought therein?
7. Secondly it is imperative to note that the applicants/defendants had not filed a counter claim to the suit. Thus their notice of motion is hanging on air, sitting on nothing! I am hence in agreement with plaintiff’s pleadings that the application is bad in law as it is not based on any proper claim, pleadings or judgment.
8. I must also point out that the arguments by the applicants that unsuccessful adverse possession claimant are **ALWAYS GIVEN 6 MONTHS** to vacate the land by the court is hollow and not supported by any jurisprudence. The case cited by the applicants **Edward Mugambi Kairanya (supra)** is distinguishable from the present case in that in the Edward Kairanya case, the suit was heard to its logical conclusion where a judgment was delivered. This is not the position in the present case.
9. I proceed to strike out the application for want of competence with costs to respondent/plaintiff.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muchiri for plaintiff

Kimaita holding brief for Kimathi K. for defendants

Both plaintiffs

HON. LUCY. N. MBUGUA

ELC JUDGE