



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC NO 62 OF 2016**

**JOEL MUGAMBI MUKIRA**

**NJORA MWANGI**

**ZAWERIA WANGARI (For and on behalf of KIMATHI**

**TENANTS WELFARE GROUP).....PLAINTIFF/APPLICANTS**

**VERSUS**

**COUNTY GOVERNMENT OF NYERI.....DEFENDANT/RESPONDENT**

**RULING**

1. Before me for determination are two the Notices of Motion dated the 17<sup>th</sup> June 2019 and 10<sup>th</sup> July 2019 brought under the provisions of Section 3A and 45 of the Civil Procedure Rules respectively, where the Plaintiff/ Applicants' seek for orders of injunction restraining the intended repossession by the Defendants of their house and/or in the alternative, a temporary order for status quo with regard to the Applicants' occupation of their premises pending the hearing and determination of these applications.
2. The said applications are supported by the grounds set on its face as well as on the supporting affidavit sworn by Joel Mugambi Mukira the 1<sup>st</sup> Applicant herein.
3. Pursuant to service of the application dated the 17<sup>th</sup> of June 2019 upon Counsel for the Defendants, they filed their grounds of opposition dated the 28<sup>th</sup> June 2019 deponing that the application was misconceived, incompetent, bad in law, untenable and an abuse of the process of the court. That further that the same was incurably defective, frivolous and vexatious without merit and ought to be dismissed.
4. Pending the hearing of the application inter parties, the Plaintiff/ Applicants filed a second application dated 10<sup>th</sup> of July 2019 to which they sought for interim orders against the Respondents for reasons that pending the hearing of the application dated 17<sup>th</sup> of June 2019 inter parte, the Defendants had served upon them a 15 days' notice to repossess their (Plaintiffs') houses.
5. Interim orders of temporal injunction were granted against the Defendants on the 11<sup>th</sup> July 2019 pending the hearing of both applications inter-parties on the 25<sup>th</sup> July 2019.
6. Despite service having been effected upon the Defendant's Counsel they failed to appear in court on the date scheduled for the inter parte hearing which hearing proceeded ex parte.
7. It was the Applicants' Counsel's submission that they sought an order of status quo in both applications with regards to the occupation of the houses within Kimathi estate in Nyeri town.
8. The court was invited to peruse the plaint filed in the year 2016 and the prayers that were sought therein. It was their submission that in the pendency of the suit which was partly heard, that the Defendant had engaged in committing activities which were aimed at defeating the suit at the end of the day.
9. That by the time the Plaintiffs came in court on their application dated the 17<sup>th</sup> June 2019, the Defendants had already issued on inventory herein marked as annexure JMM2, despite the fact that there was a contest on the ownership of the houses.

10. The Plaintiff further submitted that as per their pleadings in the plaint, they had also sought for orders of permanent injunction against further development or encroachment by private individuals. That by the time they came to court on the 17<sup>th</sup> June 2019, private developers, with the permission of the defendant, were still encroaching on the plot, as depicted in the photographs herein annexed as JMM2.

11. That what prompted the application dated 10<sup>th</sup> of July 2019 was the service of the notice of repossession, herein annexed as ZW1, and served upon them by the Defendant. That if the Defendant were to act on the said notice of procession, the suit would be rendered nugatory and therefore what they were seeking for was for orders that parties maintain the status quo pending the hearing and determination of the suit. That the Defendants would not suffer any prejudice as the Plaintiffs have been in occupation of the suit properties for more than 30 years.

#### **Determination.**

12. I have considered the Plaintiff/Applicants' oral submission. I find that indeed the Defendants were properly served wherein they only filed their grounds of opposition dated the 28<sup>th</sup> June 2019 but chose not to appear and prosecute both the applications herein. The matter proceeded ex-parte.

13. There is no doubt that the present suit was instituted vide a plaint dated the 6<sup>th</sup> April 2016. Hearing proceeded on the 6<sup>th</sup> February 2019 where the Plaintiff closed its case. It was while parties awaited the hearing of the defence case that the Plaintiff/Applicants' filed the present application.

14. As I understand it, the orders sought by the Applicant of the Status quo in this respect, is the existing state of affairs where it is intended to also freeze the state of affairs. I have balanced all the factors and circumstances in the instance suit

15. The Applicants' have clearly described the state of affairs existing then which they seek to be preserved and which state of affair has not been denied by the Respondent herein who did not appear to prosecute the application despite service.

16. It is certainly worth pointing out that since the status quo orders assist in case management, the court must always keep an eye on the fundamentals to know the state of affairs being kept in *situ*.

17. The Applicants' clearly informed the court that in the pendency of the suit which was partly heard, the Defendant had engaged in committing activities which were aimed at defeating the suit at the end of the day and by the time the Plaintiffs came in court on their application dated the 17<sup>th</sup> June 2019, the Defendants had already issued an inventory and a Notice of repossession, despite the fact that there was a contest on the ownership of the houses.

18. In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of **Mugah –v- Kunga [1988] KLR 748**, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.

19. The court having been alive to the fact that there are parties in the form of developers who have not been enjoined in the suit, orders affecting such parties' interest ought not have been made. Caution ought to be exercised whilst ordering the preservation of the status quo so as to ensure that no party is prejudiced.

20. I would therefore interfere in a limited manner by clearly defining the status quo herein to the effect that:

i. The order of status quo to be maintained by all the parties it being understood that the Plaintiff/Applicants' are still in possession of the houses and therefore there shall not be repossession of the Plaintiff/Applicants' houses.

ii. Such status quo is to be maintained by all parties until the matter is finally heard and determined. Keeping in mind the situation at the moment where the station has no judge and the matter is part heard, at the earliest opportunity when a judge is posted to the station.

iii. The costs of the applications dated the 17<sup>th</sup> June 2019 and 10<sup>th</sup> July 2019 shall be in the cause.

**Dated and delivered at Nyeri this 23<sup>rd</sup> day of October 2019.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**