



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 82 OF 2019

EDDA KANINI KARIJO.....1ST APPELLANT

MARY KARIJO.....2ND APPELLANT

VERSUS

PATRICK MUNORU1ST RESPONDENT

JOHN MUTUMA..... 2ND RESPONDENT

RULING

1. This appeal was lodged on 21.6.2019. Thereafter, the applicant filed an application dated 10.7.2019 seeking a stay of execution of the ruling in Tigania CMCC No. 29 of 2013.

2. On 23.9.2019, the court gave directions for a scene visit to be conducted of which, a report thereof was prepared by the Deputy Registrar of this court. The same is dated 18.10.2019.

3. On 5.11.2019, the court gave directions for the parties to get the scene visit report, that status quo be maintained and an order of inhibition was issued.

4. On 12.11.2019, respondents counsel made an application to be supplied with the scene visit report. The counsel for appellants averred that the court had already made the order for parties to get the report. He urged the court to give directions on the appeal and the interim orders to remain in force as per the application dated 10.7.2019 since the position on the ground had been established through the scene visit report.

5. Pursuant to the court's order of 5.11.2019, the parties were to get the report and hence respondent ought to have given reasons as to why they don't have the same. All the same I again direct that the respondent be given a copy of the scene visit report.

6. Coming to the contents of this report, I find that the same is not in tandem with the prayers sought in the application of 10.7.2019. In that application, applicant is seeking injunctive orders against the respondent in respect of parcels no's 9080 and 5230. However, the scene visit report indicates that appellant's portion is no. 9080 whereas respondent's land is no. 5230. The applicant has a permanent house whereas respondent doesn't reside on the land. It follows then that applicants house must be on the portion of land no. 9080.

7. The scene visit report also indicates that there was a fence of barbed wire which had been pulled down and the same was the alleged boundary of the two parcels and that each party was blaming the other for having pulled down the said boundary.

8. Against this background, I proceed to give directions as follows:

1. The application of 10.7.2019 is marked as spent by way of maintaining status quo, which entails the following:

a. The appellant is to remain in utilization of the land parcel no. 9080 while respondent is to remain in utilization of parcel no. 5230, pending the hearing of the appeal.

b. The aforementioned utilization of the disputed parcels shall extend only to the alleged boundary referred to in the scene visit report where there is fallen barbed wire. None of the parties is to encroach on the other person's plot.

2. The matter to be heard on priority basis.

3. The costs of the application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

M/s Ndegwa holding brief for Mwongela for respondents

Thangicia for appellants

HON. LUCY. N. MBUGUA

ELC JUDGE