



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 8 OF 2019**

**(FORMERLY MERU HCCC NO. 31 OF 2010)**

**BRIDGET RIARA EUSTUS.....1<sup>ST</sup> RESPONDENT/PLAINTIFF**

**EDWIN MARANGU.....2<sup>ND</sup> RESPONDENT/PLAINTIFF**

**WASHINGTON KIMATHI.....3<sup>RD</sup> RESPONDENT/PLAINTIFF**

**ROSEMARY IGOKI.....4<sup>TH</sup> RESPONDENT/PLAINTIFF**

**ENID NCHABIRA.....5<sup>TH</sup> RESPONDENT/PLAINTIFF**

**LINET NGEETA.....6<sup>TH</sup> RESPONDENT/PLAINTIFF**

**VERSUS**

**EUSTUS KIRIMI M'ABURI.....APPLICANT/DEFENDANT**

**RULING**

1. This matter emanates from a Notice of Motion dated 27<sup>th</sup> February 2019 brought pursuant to ***Order 51 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act CAP 21 Laws of Kenya, Sections 70 (d), 73 (1) and 78 (2) of the Land Registration Act 2012, Article 159 (2) (a) (b) (d) and (e) of the Kenya Constitution 2010*** and all other enabling provisions of the law. The applicant seeks that the orders of inhibition, prohibition, restrictions and or any cautions registered on suit parcels LR ABOGETA/L.KIUNGONE/757, 759 and 760 be lifted as the instant suit was dismissed on 7<sup>th</sup> July 2015 and no appeal is pending, and that the orders of injunction issued and restraining the applicant from selling, charging, leasing or howsoever interfering with the plaintiffs' peaceful quit uninterrupted and undisturbed actual possession, user, cultivation and enjoyment of LR. ABOGETA/LOWER KIUNGONE/757, 759 and 760 be varied or set aside among other orders.

2. The grounds in support of the application are set out on the face of application and in the affidavit of the applicant (defendant- Eustus Kirimi M'aburi) sworn on 27<sup>th</sup> February 2019. He avers that this suit was dismissed on 7<sup>th</sup> July 2015 for want of prosecution and no appeal was ever preferred. That the applicant is growing old and sickly and in the interest of justice, the inhibition, prohibition, restrictions and or cautions registered on the Suit Lands should be lifted and the lands distributed as he has proposed.

3. The application was opposed by the respondents vide the replying affidavit of Bridget Riara Eustus filed on 11<sup>th</sup> April 2019. She deponed that they are opposed to the blanket lifting of the inhibition, prohibition, restrictions or any cautions as well as the orders of injunction. However, the inhibition may be lifted if their proposed mode of distribution of the Suit parcels is acceptable.

4. Directions were given for the matter to be canvassed by way of submissions of which, only the applicant has filed submissions.

5. The issue for determination is ***whether to lift the inhibition, prohibition, restrictions or any cautions as well as the orders of injunction and whether to allow the mode of distribution of the Suit Lands as proposed by each party.***

6. The respondents initiated this suit in 2010. On 4<sup>th</sup> March 2010 the court ordered:

***“THAT an interlocutory injunction be and is hereby issued restraining the defendant/respondent from selling, charging, leasing or howsoever interfering with plaintiffs'/applicants' peaceful, quiet, uninterrupted and undisturbed actual possession, user, cultivation, occupation and enjoyment of LR Nos. Abogeta/ Lower Kiungone/757, 759 and 760, pending inter-parties hearing of the application***

on 11.03.2010.”

7. The injunctive orders were given on interim basis pending the inter-partes hearing of the application on 11.3.2010. **However, the application was not heard inter-partes EVER!** Equally, the suit was also not prosecuted hence its dismissal for want of prosecution on **7.7.2015**. But the order was immediately vacated. Thereafter, again nothing happened.

8. The purpose of interlocutory injunction is to facilitate the chance of the court to do justice. This injunction is issued for a particular time period. According to **Order 40 Rule 6 of the Civil Procedure Rules** it states:

**“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”**

9. J. L Onguto J elaborated this point in **Maxam Limited & 2 others v Heineken East Africa Import Co. Ltd & 2 others [2017] eKLR** as follows:

**“I must however also appreciate that Order 40 Rule 6 of the Civil Procedure Rules anticipates that where an interlocutory injunction has been issued on merit, then the suit is to be determined and the parties respective rights .....asserted within one year of the interlocutory order being made. The Rule appreciates and seeks to ensure that neither party is placed at an indefinite hardship through an intermediary order. The mischief was to guard against sluggish and dawdling litigants who seek to delay the prosecution of their claims: see Nguruman Ltd v Jan Bonde Neilsen & 2 Others [2014]eKLR. In my view however, the rule was not intended to occasion injustice to either party and thus a mere lapse of twelve months alone should never be enough to see the interlocutory order vacated.”**

10. The interlocutory injunction was issued ex-parte on 4.03.2010. This is about nine years ago of which this application has never been heard, neither have the respondents taken any initiative to have it heard. Clearly, the twelve months window under **Order 40 Rule 6 of the Civil Procedure Rules** has lapsed. This being their case the plaintiffs ought to have taken the initiative to prosecute their matter after the dismissal order was vacated on same date of 7<sup>th</sup> July 2015.

11. The respondents have not advanced any plausible explanation as to why they failed to prosecute the application . Even the suit remains unprosecuted. The respondents are a true definition of sluggish and dawdling litigants who seek to delay prosecution of the suit. One of the guiding principles that this court ought to abide by is that **‘justice shall not be delayed’**. See **Article 159 (2) (b) of the Constitution**. Consequently, I am of the view that the injunction order should be set aside.

12. The applicant and the respondents have each provided their mode of distribution of the suit property. However, this ought to be done during the trial. Alternatively, the parties are at liberty to explore Alternative Dispute Resolution Mechanism in so far as the dispute is concerned especially keeping in mind that the parties appear to be family members.

13. From the foregoing I am of the view that this application is meritorious and the same is allowed.

a) This suit is to be heard on priority basis.

b) The respondents are condemned to pay costs of this application.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2019**

**IN THE PRESENCE OF:-**

C/A: Kananu

Rimita holding brief for Kariuki for plaintiffs

Respondents

1<sup>st</sup> – 3<sup>rd</sup> plaintiffs

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**