



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO. 516 OF 2017 (OS)

PERIS NJERI MUIRURI.....1ST RESPONDENT/PLAINTIFF
MAXWELL MUIRURI GATETE.....2ND RESPONDENT /PLAINTIFF
HARRISON GICHUIRI MUIRURI.....3RD RESPONDENT /PLAINTIFF
EVANSON NGUGI.....4TH RESPONDENT / PLAINTIFF
CHARLES GICHARU MUIRURI.....5TH RESPONDENT / PLAINTIFF
SAMUEL RURII MUIRURI.....6TH RESPONDENT / PLAINTIFF
ANNIE WANJIKU KAMANDE.....7TH RESPONDENT / PLAINTIFF
KENNEDY MICHAEL EVANSON NGUGI.....8TH RESPONDENT/PLAINTIFF
STEPHEN MUIRURI NGUGI.....9TH RESPONDENT / PLAINTIFF
MARY WANJIKU WAHOMBA.....10TH RESPONDENT/PLAINTIFF
EDWARD KAMAU IHOMBA.....11TH RESPONDENT/ PLAINTIFF
JOHN MUIRURI IHOMBA.....12TH RESPONDENT/ PLAINTIFF
PETER MUNGA IHOMBA.....13TH RESPONDENT/ PLAINTIFF

VS

MUIRURI GATETE.....1ST APPLICANT/DEFENDANT
KAMANDE NJUGUNA.....2ND APPLICANT/DEFENDANT
MWEA NJUGUNA.....3RD APPLICANT/ DEFENDANT
MUIRURI NJUGUNA.....4TH APPLICANT/ DEFENDANT

RULING

1. This application is brought under Rule 21 of the Civil Procedure Rules and seeks the following orders;

a. The Plaintiffs be evicted from parcel land No LOC6/GIATHAINI/511, LOC6/GIATHAINI/1031, LOC6/GIATHAINI/992and LOC17/SABASABA/219.

b. The costs of the application be borne by the Respondents.

2. The application is based on the grounds; that the Applicants are the registered owners of the suit land; the Respondents are on the land illegally; the Plaintiffs claim of adverse possession was dismissed.

3. The application is supported by the affidavit of the 1st Applicant where he deponed that the ownership of the land parcel has been established beyond per adventure and the Plaintiffs claim was dismissed. That there is no Appeal that has been preferred by the Plaintiffs. He urged the Court to grant eviction orders against the Respondents.

4. The Respondents opposed the application and filed grounds of opposition as thus; the application is incompetent and does not lie; the Court is functus officio after the delivery of the judgment dismissing the suit; the application is grounded under unknown provision in law and therefore it is rendered fatally defective.

5. The 1st Respondent filed a Replying Affidavit in which she deponed and reiterated the grounds of opposition and added that the Applicants did not file a counterclaim seeking orders of eviction of the Respondents from the suit land. That the dismissal of the Plaintiff's suit did not give rise to the Applicant capable of execution by eviction. She urged the Court to dismiss the application for being an abuse of the Courts process as similar application was made by the same party in PMCC No. 164 of 1986 so much so that the Applicants is legally barred from raising the same issue.

6. With the concurrence of the Court the parties argued their application on the 11/11/19. The Applicants Counsel relied entirely on the application. The grounds adduced thereto and the supporting affidavit sworn by the 1st Applicant.

7. The Respondents Counsel argued the suit was heard and determined and the Court is functus. Additionally since the Applicant did not file a counterclaim in the main suit, they have no audience in Court. That a similar application was raised in PMCC No 164 of 1986 at Thika and is therefore barred from raising it again.

8. Having read the application, heard the parties and analysed the same the key issue is whether the application is merited.

9. With respect the Applicants Counsel, the orders under which the application is brought are non-existent. There is no Rule 21 of the Civil Procedure Rules in our laws. It is not clear under what provisions the application is brought.

10. Having said that the substance of the application is worth focusing on. The suit was heard and judgement rendered by this Honourable Court on the 24/6/19 dismissing the suit.

11. In the main suit is noteworthy that the Applicant did not mount a counterclaim against the Respondents. The issue being raised herein amounts to a new cause of action which was not before the Court in the main suit.

12. **In the case of Menginya Salim Murgani v Kenya Revenue Authority [2014] eKLR** the Supreme Court of Kenya further held that:

“It is a general principle of law that a Court after passing Judgment, becomes *functus officio* and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.”

13. The Court concurs with the Respondents/Plaintiffs that the Court is functus officio so much so that it has no power to entertain a new cause of action founded on eviction in this suit.

14. In the end the application is devoid of merit. It is dismissed.

15. The costs of the application shall be borne by the Applicants in favour of the Respondents.

16. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF DECEMBER 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Muthanji Ms HB for Gichigi Mrs for the 1st – 13th Plaintiffs/Respondents

Mr T M Njoroge for the 1st – 4th Defendants/Applicants

Irene and Njeri, Court Assistants