



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 192 OF 2017

GLADYS MUKIRI & 6 OTHERS.....PLAINTIFFS

VERSUS

THE COUNTY GOVERNMENT OF MERU.....DEFENDANT

R U L I N G

1. The Notice of Motion dated 23rd June, 2017 seeks the following orders:-

1) Spent.

2) That the Honourable Court be pleased to issue an order of an interlocutory prohibitory injunction restraining the defendant by itself, agents, officers, contractors or anybody else acting her behest, direction, control or authority from evicting the Plaintiffs quiet, peaceful, uninterrupted actual and exclusive occupation and enjoyment in respect of their rental houses, viz numbers 22, 32, 39, 41, 42, 57 and 89 situated on the defendant's property known as 491 ANGAINE ESTATE within MERU Town pending the hearing and determination of this application *inter partes* or until further Court orders and/or suit.

3) That the Honourable Court be pleased to issue any other orders as it may deem fit.

4) That costs of this Application be provided for.

2. The grounds in support of application are:-

1) That the Plaintiff are lawful tenants of the defendant, occupying their respective houses numbers 22, 32, 39, 41, 42, 57 and 89 under duly executed tenancy agreement and/or with the defendants knowledge and permission some commencing on 5th May, 1986 at its property known as 491 Angaine Estate within Meru Town.

2) That the Plaintiffs have always paid to the Defendant all rents as and when due for the houses they are occupying until recently when the defendant's offices without reasons abruptly stopped receiving rent.

3) That the Plaintiffs have therefore legally occupied their respective houses belonging to the defendant for long periods of time ranging between 10 years to over 30 years without interference from the defendant or its officers and/or agents whatsoever.

4) That the defendant has through her offices and/or agents without any notice or warning whatsoever commenced demolition of the Plaintiffs houses by use of extreme violence and brutality

and when confronted by the Plaintiffs to show them the authority under which they were carrying out the demolitions they declined and threatened to assault the plaintiffs.

5) That the defendant's actions are malicious, insensitive, unlawful, illegal and in breach of their constitutional rights and thereby their legal right have been unlawfully invaded.

6) That the Plaintiffs attach profound sentimental value into the suit premises having been in occupation with their families for long periods of time ranging between 10 years to over 30 years and if they are evicted without due process and compensation, they shall be rendered destitute, homeless and shall suffer great prejudice, loss and damage as they have no other place to call home.

7) That the Plaintiffs have a good prima facie case with high probability of success.

8) That the balance of convenience herein is in favour of the Plaintiffs as the defendant's actions are without any lawful justification and as such should not be allowed to proceed.

9) That the Plaintiffs have reasonable fear that they shall be greatly prejudiced and imminently shall suffer irreparable loss and damage that is incapable of recompense in damages and this suit will be rendered nugatory if this application is not allowed.

10) That there shall be no prejudice to the defendant if the conservatory orders sought are granted.

3. The 2nd Plaintiff has sworn a Replying Affidavit which more or less contains the grounds in support of the application. She has further availed documents in support of the application which include.

- Tenancy agreements.
- Various receipts for rate/rent payments by the Plaintiff to Respondent.
- Photographs of the houses

4. A Replying Affidavit has been sworn by the Respondent's Chief legal officer where he states:-

1. That the defendant is opposed to the application and suit in its entirety as it seeks to re-open issues which have been finally and conclusively decided by the Honourable Court between the same parties over the same subject matter in MERU H.C ELC NO. 76 of 2015; Catherine Kageni & 5 others –vs- THE COUNTY GOVERNMENT OF MERU (Annexed hereto and marked "T.A 1 (a)") is of the decision by Hon. Justice P.M. Njoroge (MR) of 20/12/2016).

2. That the Plaintiffs, though not named as parties in MERU ELC NO 76 OF 2015 CATHERINE KAGENI & 5 OTHERS –VS- THE COUNTY GOVERNMENT OF MERU were part of the beneficiaries of the proceeds of that suit. (Annexed herewith and marked "T.A.2". is a copy of the list of beneficiaries who were compensated in that suit).

3. That in the said consent judgment a sum of Kenya Shillings one Million, Six Hundred Thousand (1,600,000) only, was paid to the applicants by the Meru County Investment and Development Corporation through cheque number 00738 and date 22/12/2016 addressed to the Branch Manager, Kenya Commercial Bank and the applicants were to vacate the suit land within 60 days from the signing of the consent, the commencement date being 8/12/2016, a day after signing of the consent.

4. That in strange twist of events some of the plaintiffs in MERU ELC NO. 76 OF 2015; CATHERINE KAGENI & 5 OTHERS –VS- THE COUNTY GOVERNMENT OF MERU denied receiving compensation amounts from the defendant but in a ruling delivered on 21st June, 2017 before Hon. Justice E. C. Cheron, the Court found otherwise and dismissed their protects and vacated the orders of injunction.

5. That in any event and without prejudice to the foregoing the Plaintiffs/Applicants have conveniently failed to make a full disclosure with regard to the intended demolition of the

defendant/respondent's houses in Angaine Estate (hereinafter "the estate") to pave way for the erection of new and modern 15 storey to be known as 'Meru Rising Tower' (hereinafter "the development") building on the land where the estate stands.

6. That on 29/07/04 the department of Lands, ICT and planning of the defendant/respondent held a meeting with some of the residents of the estate at the slopes Hotel in Meru at 5:00 PM .Annexed herewith and marked "TA 3" is a copy of the minutes of the said meeting.

7. That the respondent in the said meeting issued notice to vacate to the residents and explained that the reason for the vacation was to pave way for the development. Reference is made to MIN/MER/ANGAINE/3/15 on page 2 of the minutes and page 7 of the report by the concerned County Government sectoral committee annexed herein as "T.A.4".

8. That it is therefore not true that the defendant/respondent never issued a notice to vacate as alleged by the applicants.

9. That the defendant /respondent followed the law to the letter in the process and even settled two matters before a Court of law with the Plaintiffs/Applicants in an opportunity to air any issues that the residents raised in MERU ELC NO. 76 OF 2015; CATHERINE KAGENI & 5 OTHERS –VS- THE COUNTY GOVERNMENT OF MERU and MERU CONSTITUTIONAL PETITION NO. 1 OF 2016; BONIFACE KOOME & 10 OTHERS V HON. PETER MUNYA & 2 OTHERS (Annexed herewith and marked "TA.5" are copies of letters of correspondence between the parties that settled the matters).

10. THAT upon receipt of petition the County Assembly of Meru (hereinafter "the house") tasked the Sectoral Committee on land Economics and Physical (hereinafter "the committee") to investigate the issues raised in the petition and report to the house.

11. That the committee did a thorough investigation and presented the report to the house. Annexed herewith and marked "T.A 6" is a copy of the committee's report presented to the house.

12. That the estate was constructed to house the employees of the County Council of Meru but majority of the people who were allocated had moved out and instead sublet to other people contrary to the lease agreement. See page 6 of the report.

13. That the Plaintiff /Applicant have rent arrears.

14. That the defendant/Respondent never at any time permitted the tenants (plaintiff/applicant) to fix metal doors or windows as alleged in the Supporting Affidavit.

15. That since the plaintiffs/applicants' ground for seeking a temporary injunction is to be paid compensation for metal doors and windows that were allegedly bought and fixed to the houses by the plaintiffs/applicants a temporary order of injunction cannot suffice because the damage (if any) can easily be compensated through liquidated damages in the unlikely event that their claim is successful.

16. That the Plaintiff/applicants have not demonstrated any prima facie case capable of success and this application should be dismissed.

5. I have perused all the material presented before me. I have also perused file No. Meru ELC NO. 76 of 2015. The Judgment in Meru ELC 76 of 2015 was affecting the residents in the parcel No. 491 ANGAINE ESTATE in Meru, whereby the Residents were to vacate the suit land within 60 days (from date of signing the Consent).

6. The present suit is in respect of the same parcel of land No. 491 ANGAINE ESTATE.

7. Granting orders in the present application would in essence affect the implementation of the aforementioned Judgment.

8. In the circumstances, **I find that the application is unmerited and the same is hereby dismissed with no orders as to costs.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

Court Assistant: Janet

Muthomi for Plaintiff/ Applicant present

Miss Mwiraria for Defendant present

HON. L. N. MBUGUA

ELC JUDGE