



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 10 OF 2013

(FORMERLY EMBU H.C.C.C NO. 67 OF 2007)

NOW CONSOLIDATED WITH MERU HCC NO. 179 OF 2014) (OS)

GEORGE MUDIAH GICHERU.....APPLICANT

VERSUS

CELESTE NJUE ERENKANYA.....DEFENDANT

RULING

1. The application dated 15.3.2018 is seeking for the following orders;

(i) Spent.

(ii) That M/S. Peter Njagi Njue, Lawrence Kiraithe, Kenneth Gitonga and Mutembei Njue be punished by the court for contempt of court orders as per the judgment delivered on 15/11/2017 by this court.

(iii) That the court directs the auctioneers to destroy the new buildings built in the suit land.

(iv) That the court do make any other or further orders as would meet the interest of justice in this case.

2. Applicant has filed a supporting affidavit where he states as follows;

(i) That by this court's judgment dated the 15th November 2017 the defendant's his relatives, his servants, agents, his family members or employees were ordered to vacate possession of L.R No. Muthambi/Igamurathi/268.

(ii) That the defendants filed an application dated 19/12/2017 praying for an order for stay of execution of the judgment delivered on 15.11.2017 pending the hearing and determination of the intended appeal, and the court allowed defendants application was conditionally allowed for 14 days stay.

(iii) That in the meantime M/S Giant Auctioneer had successfully evicted the defendants on 16/2/2018 and the 14 days allowing the stay was overtaken by event.

(iv) That all the judgment debtors' houses and other buildings were destroyed and the judgment creditor was put into possession.

(v) That by a letter dated 16.2.2018 addressed to the Deputy Registrar Meru, the court was informed the court that the auctioneers had carried out the eviction and even gave the judgment creditor a certificate of vacant possession dated 16.2.2018 (the letter and certificate of vacant possession are annexed and marked 'GMG 1).

(vi) That this notwithstanding, the relatives of the judgment debtor namely Peter Njage Njue, Lawrence Kiraithe, Kenneth Gitonga & Mutembei Njue moved back to the suit land and built new houses which is contrary to the court order.

(vii) That the said relatives are guilty of the offence of contempt of court and they should be adequately punished.

3. The application is opposed vide the Replying affidavit of one Peter Njagi Njue who has deponed as follows;

(i) That he is the legal representative of the respondent herein and also a party to the suit therefore competent to swear this affidavit as hereunder.

(ii) That being aggrieved by the judgment of this court delivered on 15th November 2018, Respondents family agreed to appeal the said judgment, and they consequently instructed their advocate on record to file a Notice of appeal and apply for typed proceedings to prepare the record.

(iii) That the proceedings were not expeditiously typed due to pressure at the court's registry, and since the application of stay pending appeal at the court of appeal could not be done without the record, their advocate preferred the said application before the trial court.

(iv) That with the intent of frustrating their quest to appeal the judgment, during the pendency of the ruling for the application for stay, the applicant accompanied by a rowdy mob descended on the suit land and destroyed all the cash crop and food crops in the said land and some of their temporary houses, where the loss was devastating.

(v) That although the court gave a stay of 14 days in its ruling, this period was not sufficient for the said court to provide the Respondents with typed proceedings in order to enable them prepare a record. To date the file is yet to be allocated for typing of proceedings.

(vi) That the suit land is their only source of livelihood and 4 generations numbering 42 individuals occupy the said land, from elderly octogenarians to toddlers. The deponent himself is a person with disability and depends upon the proceeds from the cash crops in the suit land for subsistence.

(vii) That although the plaintiff and his goons destroyed some of their houses and crops, they have always continued to occupy the suit land as they have no alternative land.

(viii) That the plaintiff's application is therefore made in bad taste and with a view of curtailing Respondents quest to appeal the judgment. The respondent beseeches this court to safe guard their constitutional right of appeal since the court itself has failed to provide them with the typed proceedings which are required to prepare the record.

(ix) That the prayers sought by the plaintiff is a deliberate calculation to ensure that the elderly and children who will be left at home are defenseless against wanton destruction of property which the plaintiff intends to clothe with the legitimacy of a court order.

(x) Respondent urges the court to make an order to the effect that their advocate be supplied with typed proceedings within 14 days to enable them prefer an appeal and other reliefs at the court of appeal.

(xi) That should the court find its staff overwhelmed by the pressure of work, then it would give positive directions that will ensure that Respondents constitutional right to appeal is protected and also their property and livelihood is safeguarded from destruction.

4. Submissions have been duly filed by both sides and I have considered the same.

5. Applicant has submitted that the respondent have admitted all the ingredients of the offence of contempt of court. Respondents on the other hand claim that they are pursuing appeal but they are encountering hardships because they have not gotten the typed proceedings.

6. I hereby quote Lord President Clyde in Johnson versus Grant 1923 SC 789 at 790 with regard to issue of respect of court's orders; ***"The law does not exist to protect the personal dignity of the Judiciary nor private rights of the parties on litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged"***.

7. The jurisdiction to punish for contempt of court is exercised by this court vide section 5 of the Judicature Act and under the contempt of court Act.

8. The standard of proof is certainly higher than proof on a balance of probability.

9. In the present case there is a judgment delivered by this court on 15.11.2017. The circumstances under which the court granted a stay of 14 days are captured in my ruling of 21.2.2018.

10. The respondents have not in any way denied the claims of the applicant that eviction was carried out but some family members, the ones mentioned in the application went back and started to occupy the land all over again. They don't appear keen to purge the contempt.

11. In the circumstances, I find that the application is merited. I hereby find that the persons named as Peter Njagi, Lawrence Kiraithe, Kenneth Gitonga and Mutembei Njue are in contempt of court's orders of 15.11.2017 and 21.2.2018 and are found guilty accordingly. The named persons are directed to personally appear before this court on a particular date for mitigation and sentencing.

12. Meanwhile, prayer 3 in the application dated 15.3.2018 is allowed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 16th MAY, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

B.G Kariuki for plaintiff present

Mwiti holding brief for Kaumbi for defendant present

Plaintiff absent

Defendant present

HON. LUCY. N. MBUGUA

ELC JUDGE