



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN MERU

ELC CASE NO. 270 OF 2016

PETER MURIUNGI.....1ST APPLICANT

KABURUI LERIA.....2ND APPLICANT

VERSUS

TRUSTEE REGISTERED CATHOLIC PARISH D.O.M LAARE...RESPONDENT

RULING

There are two pending applications, both filed on 18th April 2018, one for the plaintiffs, the other is for the defendant.

Plaintiffs' application

Plaintiffs are seeking for a stay of execution pending the hearing and determination of appeal. The grounds in support of this application are that the applicants have already filed a notice of appeal. They also aver that respondent is illegally and irregularly trying to execute an order which he never sought and which was never granted in the decree of this court. Applicants aver that they stand to suffer irreparable loss and damages if their application is not allowed.

The first plaintiff, one Peter Muriungi has also sworn a supporting affidavit where he avers that no counter claim was filed by defendant and hence the eviction orders sought are unmerited.

Defendant's application

Defendant is seeking orders to authorize M/S Jocet auctioneers to use all necessary means to remove the plaintiffs and their properties from land parcel number Ithima/Ntuene/1474 and deliver possession thereof to defendant. The grounds in support of this application are that plaintiffs have totally refused to vacate the suit land. There is a supporting affidavit of one Augustino Murea who has given an account of how plaintiffs had sought for time to vacate the suit land. He also avers that plaintiffs had earlier on defied a court order to move from the suit land.

Determination

Having weighed all the arguments of the parties herein, I have found it necessary to revisit the orders which were sought by the plaintiffs in this suit. The only prayer in the plaint, save the one on costs, is **“An order of permanent injunction restraining the defendants, its agents, servants, assignees or anyone acting on its behalf from evicting and/or interfering with plaintiffs' peaceful possession from parcel no. 1474 at Laare market.”**

Judgment thereof was delivered on 26/1/2018, where it was stated as follows; **“Plaintiffs have not demonstrated that they have any rights capable of being protected in respect of the suit land. They don't own the land and they are not tenants of defendant. They are therefore not entitled to the prayers in the plaint.”** The plaintiffs cannot now advance a claim that they are entitled to stay on the land because there was no counter claim to have them evicted.

Further, I note that when judgement was delivered on 26th January 2018 counsel for the plaintiffs had addressed the court as follows; **“I pray for a stay for 30 days to enable the plaintiffs to vacate the suit land premises and get alternative space.”** The court granted the plaintiffs 10 days. There is no plausible explanation as to why the plaintiffs have made an about turn whereby they now want to stay on the suit land.

It is also not lost to this court that plaintiffs have defied the court order issued on 20th February 2018. I therefore find that the prayers sought by the plaintiffs are not merited.

Final orders

- 1) Plaintiffs' application dated 18th April 2018 is hereby dismissed.
- 2) Defendant's application dated 18th April 2018 is allowed.
- 3) Plaintiffs are condemned to pay costs in both applications

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH DAY OF SEPTEMBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Thangicia holding brief for H. Gitonga for defendant

1st plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE