



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. 3 OF 2015**

TWO THIRDS INVESTMENT LTD & 10 OTHERS.....PLAINTIFFS/RESPONDENTS

-VERSUS-

KATANA SAID KALAMA & 3 OTHERS.....DEFENDANTS/APPLICANTS

**RULING**

1. The defendants moved this Court under section 1A, 2A and 3B of the Civil Procedure Act and Order 22 rule 22 of the Civil Procedure Rules seeking for;

**a) There be a temporary stay of execution of the ruling this Court delivered on 6<sup>th</sup> July 2016 pending the hearing and interpretation of this application inter partes**

**b) The Honourable Court do grant an interpretation of its ruling**

**c) Costs be provided for.**

2. According to the applicants, the orders of 6<sup>th</sup> July 2016 have been grossly misinterpreted as there were no express orders of either demolition or evacuation of the defendants from the suit premises granted. That the plaintiff is incessantly harassing the applicants/defendants, their agents, servants and families living in the suit property. Further that the uncertainty in terms of the ruling dated 6.7.2016 causes hardship on the applicant and his family yet he is not the one who is harvesting the sand. That unless the orders of stay is granted, the entire suit will be rendered nugatory.

3. The application is supported further by the affidavit sworn to by Katana Said Kalama. In paragraph 10 *“he beseeched the Court that if not satisfied to grant the orders to stay then she should issue an order of status quo ante meaning the applicants remain in occupation as it had been from the date prior to the filing of the suit, just to preserve the suit property pending determination of the main suit”*

4. The application is opposed by the plaintiffs via a replying affidavit sworn by J. K Wanyoike. Mr Wanyoike gave chronology of events which took place before the order of 6<sup>th</sup> July 2016 was made. For instance that a joint survey was carried out to identify the plots that were occupied by the applicants. Secondly that the order restrained the applicants and their proxies or family from encroaching on, trespassing, constructing, fencing or cultivating or grazing on the plots named in the order. That the applicants have not filed an appeal. That the plaintiffs have not set foot on the 30 plots or interfered with the defendant’s quiet possession.

5. The plaintiffs depose that the application is brought based on fears that they may violate the order of 6<sup>th</sup> July 2016 which fears are unsupported by specific evidentiary material. Further that the applicants have not disclosed on which plot his alleged damaged structures if any stood. They contend the ruling of 6<sup>th</sup> July 2016 is clear and does not need clarification or interpretation. Mr Wanyoike deposed that the intention of this application is to remove the protection the Court accorded the suit property. He urged the Court to dismiss the application.

6. Parties made oral submissions which I have considered while writing this determination. From the

submission of the applicants, they contend there was no order for demolition yet the 1<sup>st</sup> defendant's structures were demolished. Hence they seeking stay of execution of the ruling of 6.7.2016. This Court rendered its ruling on 6<sup>th</sup> July 2017 which allowed the application in terms of prayer 3 of the motion with exceptions that the order does not apply to the 30 plots Nos 6239, 6240, 6245, 6246, 6247, 6248, 6253, 6255, 6256, 6272, 6273, 6299, 6298, 6330, 6303, 6332, 6333, 6233, 6234, 6263, 6320, 6264, 6270, 6269, 6268, 6262, 6315, 6314, & 6268 occupied by the defendants as brought out in the survey report.

7. The defendants/applicants are seeking an interpretation of this order. I do not understand the basis for requesting the interpretation when prayer 3 of the motion dated 20.1.2015 clearly asked for an order to issue **“restraining the Defendants/Respondents by themselves, family, proxies, agents, servants, employees and/or otherwise by way of injunction from encroaching, trespassing, construction, fencing, cultivating, gazing, obstructing the applicant's right of ingress and/or egress into/or out of all the parcel known as Plots Nos. MN/II/6212, 6213, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6222, 6223, 6224, 6225, 6226, 6227, 6228, 6228, 6229, 6230, 6231, 6232, 6233, 6234, 6235, 6236, 6237, 6238, 6239, 6240, 6241, 6242, 6243, 6245, 6246, 6247, 6248, 6249, 6250, 6251, 6252, 6253, 6254, 6255, 6256, 6257, 6258, 6259, 6260, 6261, 6262, 6263, 6264, 6265, 6266, 6267, 6268, 6269, 6270, 6271, 6272, 6273, 6274, 6275, 6276, 6277, 6278, 6279, 6280, 6281, 6283, 6284, 6285, 6286, 6287, 6288, 6289, 6290, 6291, 6292, 6293, 6294, 6295, 6296, 6297, 6298, 6299, 6300, 6301, 6302, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 6310, 6311, 6312, 6313, 6314, 6315, 6316, 6317, 6318, 6319, 6320, 6321, 6322, 6323, 6324, 6325, 6326, 6327, 6328, 6329, 6330, 6331, 6332, 6333, 6334, 6335, 6336, 6337, 6338, 6339, 6340, 6341, 6342, 6343, 6344, 6345, 6346, 6347, 6348, 6349, 6350, 6351, 6352, 6353, 6354, 6355, 6356, 6357, 6358, 6359, 6360, 6361, 6362, 6363, 6364, 6365, 6366, 6367, 6368 and 6369( original CR. No. 1222, MN/II/390) pending the hearing and determination of this suit.**

8. This is prayer that was allowed on the terms that the order does not affect the plots occupied by the defendants as per the joint survey report. I did not grant an order of status quo as is alluded to by the defendants/applicants. Consequently if the applicants were unhappy by my decision of 6<sup>th</sup> July 2016, then they were at liberty to appeal or apply for review. Alternatively if the said order has been breached by the plaintiffs as is submitted for the defendants (that the 1<sup>st</sup> defendant's structure was demolished) then they ought to have commenced contempt proceedings. They have not taken either of the options available to them in law.

9. Consequently I find no merit in the present application and dismiss it with costs to the Plaintiff/Respondents.

**Dated and delivered in Mombasa this 7<sup>th</sup> day of February 2017**

**A. OMOLLO**

**JUDGE**