



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2015

MARTHA WAIRIMU KIGAMBA 1ST PLAINTIFF

RAHAB WAMBOI NJUGUN2ND PLAINTIFF

DOUGLAS KAHATO GIKOMYO3RD PLAINTIFF

VERSUS

LUCY WANJIRU KISEMBA 1ST DEFENDANT

SAMMY MORAYA KIGAMBA2ND DEFENDANT

RULING

1. The Applicants herein **Lucy Wanjiru Kisemba** and **Sammy Moraya Kigamba** filed an application dated 27/1/2016 in which they seek review of the court's order given on 25/6/2015. They contend that before the order was given they had already planted maize on the suitlands and they therefore require limited access to the suitlands for purposes of harvesting the maize.
2. The Applicants had been sued in this case by the Respondents who also filed an application for injunction seeking to restrain the Applicants from interfering with some three properties namely **Trans -Nzoia/Cherangany/1267, 1268 and 1271**. The application was argued and in a ruling delivered on 25/6/2016, the Applicants who were the Respondents in that application were restrained from interfering with the three parcels pending the hearing and determination of the suit.
3. The Applicants argue that if they moved into the suitlands and harvested the maize on it, they risk being cited for contempt and that is why they have come to court seeking review of the order to allow them to harvest the maize which is wasting away and is being stolen.
4. The Respondents have opposed the Applicants' application based on the replying affidavit sworn on 15/2/2016. The Respondents contend that the application is misconceived and that it cannot be allowed. That the suit properties do not belong to the Applicants and as such they are not entitled to the orders they are praying for.
5. The Respondent contend that if the Applicants are to be allowed to harvest the maize, the harvest should be conditional. That the Applicants should be allowed to harvest the maize, in their presence, shell it, dry it and sale the same and deposit the proceeds thereof in court or in a joint interest earning account in the names of the advocates for the parties.
6. I have considered the Applicants' application as well as the opposition to the same by the

Respondents. The issue which is for determination in this application is whether the Applicants have established that they have grounds for review of the order of 25/6/2015.

7. The application herein has been brought under **Order 45** which deals with review. The said order provides that any party aggrieved by a decree or order of the court from which an appeal is allowed but no appeal has been preferred or from a decree or order from which no appeal is allowed can apply to court for review of the decree or order upon grounds given therein. One of the grounds for review is demonstration that there is sufficient reason for review.
8. In the instant case, it is not contended that before the injunctive orders were given, the Applicants had planted maize on the suitlands. The maize which was due for harvest in October last year is still on the suitlands. The Respondents are not utilising the suitlands where the maize is standing. The Applicants are only praying that they be allowed limited access to the suitlands for purposes of harvesting the maize. They are not seeking for any other orders.
9. This application was brought under certificate of urgency. Its hearing was delayed because the parties were trying to negotiate a settlement which did not materialize. I find that this is a proper case where the order of this court should be reviewed. It is pointless to leave maize which is ripe to be harvested to rot away in the farms when that is not benefiting both the Applicants and the Respondents. The removal of the maize will pave way for the Respondents to utilize the land if they so desire.
10. I do not see the basis for the Respondents to attach conditions to the variation or review of the order. The Respondents were aware that the Applicants had planted maize before they came to court. The application which resulted in the order sought to be reviewed was filed on 5/5/2015. Planting season in Trans-Nzoia is between March and April and at times May for late planters. It will be ridiculous to refuse to review the court's order given the reason put forth by the Applicants.
11. I find that the Applicants' application is well merited. The Applicants have shown sufficient reason for review of the orders. I therefore review the orders of 25/6/2015 to the extent that the Applicants are hereby allowed to enter the suitlands for purposes of harvesting the maize which is on the same. The harvest should be done within seven days from the date of this ruling. Costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 25th day of April 2016.

E. OBAGA

JUDGE

In the presence of Mr Teti for Plaintiff/Respondent and Mr Karani for Defendants/Applicants

Court Assistant – Isabellah

E. OBAGA

JUDGE

25/4/16