



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
ENVIRONMENTAL AND LAND COURT
CIVIL CASE NO 76 OF 2015

CATHELIN KAGENI.....1ST PLAINTIFF
CECILIA MAKEMBO.....2ND PLAINTIFF
EVANS MWITI.....3ND PLAINTIFF
JOSEPH KAARIA.....4TH PLAINTIFF
BRIDGET IHERU.....5TH PLAINTIFF
PENINHA MAGIRI.....6TH PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF MERU.....DEFENDANT

RULING

1. The Plaintiff filed an application dated 2nd September, 2015 seeking the following orders:

- 1. That this application herein be certified as urgent and be heard ex-parte in the first instance .***
- 2. That this Honourable Court be pleased to issue temporary orders of injunction restraining the defendant by its officials, agents constructors, or anybody acting at its behalf from evicting the plaintiffs, demolishing and /or in any way whosoever interfering with plaintiffs proprietary right over all their rental houses/stall standing on the defendant's property known as 491 ANGAINE ESTATE within Meru Town pending hearing and determination of the application.***
- 3. That this Honourable Court be pleased to issue temporary orders of injunction restraining the Defendant by its officials, agents, constructors, or anybody acting at its behalf from evicting the Plaintiffs. Demolishing and/or in any way howsoever interfering with the Plaintiffs proprietary rights over all their rental houses/stall standing on the defendant's property known as 491 ANGAINE ESTATE within Meru Town pending hearing and determination of this suit.***
- 4. Costs of this application be provided for.***

2. The application is supported by the Affidavit of CATHERINE KAGENI, the 1st Plaintiff and has the

following grounds:

(a) That the defendant is the legal owner of all the houses/stall standing on the defendant's property known as 491 ANGAINE ESTATE and the Plaintiffs have been the tenants on the said houses/stall standing thereon.

(b) That the Plaintiffs have been the tenants since 1985 and upon the defendant's request they have fixed metal doors and windows on their rental houses/stalls standing on the defendant's property known as 491 Angaine Estate for the reasons of area insecurity.

(c) That on the 31/8/2015 the Defendant without any justification and/or notice at all secretly and without the knowledge of the plaintiffs the defendant's agent ambushed the Plaintiffs and by use of force and violence removed some of the roofs in respect of the Plaintiffs rental stall/houses and further threatened the Plaintiffs with eviction and demolition in total violation of the tenancy agreement and without compensating the Plaintiffs of the said metal doors and windows as earlier agreed.

(d) The Defendant's actions are illegal, unprocedural and unconstitutional unless restrained the Plaintiffs stand to suffer irreparable loss and damages.

The application was heard EXPARTE BY THE Hon. Lady Justice Gacheru in Nairobi on 4th September. Interim Orders were issued in terms of prayer 2 of the application pending hearing and determination of this application. The effect of the Order issued by the Hon. Lady Justice Gacheru was that the Plaintiffs were to enjoy their proprietary rights over all their rental houses and stalls standing on the Defendants property known as 491 ANGAINE ESTATE within Meru Town.

3. Over time the Interim time the Interim Orders issued by the Hon. Lady Justice Gacheru have been extended. They are therefore extant and should be obeyed by the Defendant and any other party that has a duty to see that the spirit of the orders is upheld.

4. The Plaintiffs claim that the Defendant, the County Government of Meru, on 8/12 /2015 instructed MEWASS officers to move and disconnect water and remove Meters from the Plaintiff's rental house and this was done.

5. The Plaintiff's further claim that on 14/01/2016, the Defendant/Respondent instructed Kenneth Chege, the Regional Manager of Kenya Power and Lighting Company to disconnect electricity from Angaine Estate and this was done.

6. As a consequence, the Plaintiff filed an application for contempt proceedings dated 21st January, 2016. The application seeks orders;-

1. That this Honourable Court be pleased to certify this application as urgent and the same be heard ex-parte in the first instance.

2. That this Honourable Court be pleased to issue warrant of arrest against the County agents namely JULIUS KIMATHI, MATHEW NTEERE and Kenya Power Regional MT. Kenya Manager Engineer KENNETH CHEGE for disobeying valid Court Orders dated 4th September 2015.

3. That this Honourable Court be pleased to commit the three above named into civil jail and/or impose any other fine for disobeying Court orders dated 4th September, 2015 with impunity.

4. That the three above named do purge the contempt before being given audience by this Honourable Court.

5. Costs of this application be provided for.

7. The application is supported by the Affidavit of CATHERINE KAGENI, the 1st Plaintiff and has the following grounds:-

- a. That this Honourable Court issued orders of injunction on 4/9/2015 and extended on 1/12/2015 and served upon the defendants and its Advocate on 2/12/2015.*
- b. That on the 1/12/2015 the said orders was extended and the same were served upon the defendant and its counsel on 2/12/2015.*
- c. That on the 8/12/2015 the Defendants instructed the MEWASS officers to move and disconnect water and remove meters from the Plaintiff's rental houses.*
- d. That on 9/12/2015 after receiving the information from the Plaintiff we wrote a letter to the commercial Manager MEWASS one Mr. MATHEW NTEERE.*
- e. That the said MATHEW NTEERE was duly served with a copy of the said letter and he appended his signature on the face of the notice.*
- f. That the said County Secretary JULIUS KIMATHI issued further directions to the Manager MEWASS that they must continue disconnecting the water in total violation of Court Orders.*
- g. That on 14/1/2016 the respondent further instructed the Regional Manager Kenya Power KENEETH CHEGE to move and disconnect electricity from Angaine Estate.*
- h. That Court orders are not given in vain and they must be obeyed to the letter and this case unless the contemnors are punished the honourable Court will be jeopardized of its integrity.*

8. The application for contempt proceedings could not be heard on 09/03/2016 for various reasons. The matter came up in Court on 18/05/2016. The Advocate for the Plaintiffs informed the Court that he wanted the application dated 21/01/2016 prioritised because the Plaintiffs had no water or electricity. He told the Court that the Defendant was pretending to obey the Court Orders but is using other parties to ensure that the Plaintiffs did not enjoy their proprietary rights as ordered by the Court.

9. I do find that there are Court Orders directing that the Plaintiffs be allowed to enjoy their proprietary rights over their rental houses and stalls standing on property known as 491 ANGAINE ESTATE IN MERU, TOWN.

10. The constitution of Kenya in its preamble recognizes that Kenyans should be respectful of the environment which is our heritage and Kenyans should sustain it for the benefit of future generations. Article 42 of the Constitution entitles every Kenya to a right to a clean and healthy environment. Section 13 (3) of the Environment and Land Court Act empowers this Court to address itself to claims that parties' fundamental rights to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution are upheld. Among the guiding principles enunciated by the Environment and Land Court Act is the precautionary principle which is contained in Section 18 (vi).

11. I opine that the Plaintiffs in this suit who are still in occupation of their rental premises by dint of a Court Order can not enjoy their right to a clean and healthy environment if they do not have water. There is also no doubt that provision of electricity enhances the enjoyment of a clean and healthy environment. Enjoyment of their proprietary rights as ordered by this Court are hampered by disconnection of electricity.

12. There is a Constitutional Imperative that this Court promotes the enjoyment to a clean and healthy environment. As the parties canvass their various applications including the one for contempt proceedings, environmental issues should be given precedence. I issue the following orders:-

- 1. Pending hearing and determination of the application dated 02/09/2015 the County Agents*

JULIUS KIMATHI and MATHEW NTEERE, who is also responsible for MEWASS affairs and KENNETH CHEGE, Regional Manager, Mount Kenya Region, Kenya Power and Lighting Company, do restore Water and electricity, whichever concerns them within 10 days of the delivery of this ruling.

2. For avoidance of doubt the Plaintiffs will be required to pay for the water and electricity they will be using pending hearing and determination of the application dated 2nd September, 2015

3. Issues regarding costs will be addressed later on.

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF MAY, 2016 IN THE PRESENCE OF:-

CC: Daniel/ Lilian

Odhambo for 3rd alleged Contemnor

Mugambi Present for Plaintiffs

Ojiambo h/b Mwangela for Defendant

Ojiambo present for 1st and 2nd alleged Contemnors

P. M. NJOROGE

JUDGE