



IN THE COURT OF APPEAL

AT NYERI

CIVIL APPLICATION NO. 139 OF 2017 (UR 62/2017)

(CORAM: OUKO (P), KARANJA & OKWENGU, JJA)

Between

GLADYS MUKIRI.....1ST APPLICANT

ISABEL MUNYANGE M'IKIARA.....2ND APPLICANT

EDWARD NJUGUNA NJUKIA.....3RD APPLICANT

STELLA IGOKI KUBAI.....4TH APPLICANT

ROSELYNE GACHERI KINYUA.....5TH APPLICANT

KAGENDO JOSES.....6TH APPLICANT

CATHERINE KAREA TUTA.....7TH APPLICANT

AND

THE COUNTY GOVERNMENT OF MERU.....RESPONDENT

(Being an application for injunction pending the hearing and determination of an intended appeal against the Ruling of the Environment and Land Court of Kenya at Meru (L. Mbugua, J) delivered on 18th December, 2017

in

ELC No. 192 of 2017)

RULING OF THE COURT

[1] The applicants were tenants of the County Government of Meru (respondent) in various residential houses in property known as 491 Angaine estate within Meru town (suit premises). By a plaint filed on 23rd March, 2017 in the Environment and Land Court (ELC), the applicants sued the respondent seeking an order of a permanent prohibitory injunction restraining the respondent, its agents or officers from evicting the applicants, demolishing the residential premises or in any way interfering with the applicants' peaceful and quiet enjoyment of the suit premises.

[2] Filed contemporaneously with the applicants' plaint, was a notice of motion dated 23rd June, 2017 in which the applicants moved the ELC for orders of interlocutory injunction restraining the respondent from interfering with their peaceful and exclusive occupation of the rental houses on the suit premises, pending the hearing and determination of their suit.

[3] Upon hearing the applicants' motion and considering a replying affidavit that was sworn by the respondent's Chief Legal Officer, the learned Judge of ELC found, *inter alia*, that the respondent had issued notices to the applicants to vacate the houses to pave way for the development of new flats on a modern 15 storey building; and that on 8th December, 2016 a consent had been recorded in Meru High Court ELC No. 76 of 2015, Catherine Kageni & 5 others vs the County Government of Meru, that the tenants in the suit premises, would

vacate the premises within 60 days from the date of the consent in consideration of compensation totaling Kshs. 1,600,000; that the applicants as beneficiaries of the consent received compensation; and that in any case, the applicants could be adequately compensated by an award of damages. The learned Judge therefore dismissed the applicants' motion.

[4] The applicants who were aggrieved by the ruling of the learned Judge lodged a notice of appeal on 20th December, 2017. They have now moved this Court by way of a notice of motion dated 21st December, 2017 seeking an interlocutory prohibitory injunction restraining the respondent, its agents or officers from evicting them or demolishing the suit premises, or in any way interfering with their quiet and exclusive occupation. The applicants contend that they have been tenants in the premises for periods ranging between 10 and 30 years, and have made substantial improvements on the premises including fixing of metal doors, ceiling, windows and window grills, and that they have sentimental value in the suit premises. They maintain that if evicted, they will suffer great prejudice, as they will be rendered homeless. In addition, that the respondent's action is not only illegal but a breach of their constitutional rights.

[5] The respondent has opposed the applicants motion through a replying affidavit sworn by its acting Legal Officer **Irah Nkuubi**, in which he maintains that pursuant to the consent recorded in **Meru High Court ELC No. 76 of 2015**, the applicants were compensated in full and final settlement, and should therefore vacate the premises in accordance with the consent which was adopted by the court. The respondent therefore urged the Court to dismiss the applicants' motion.

[6] In accordance with the Covid-19 practice directions hearing of the applicants' motion was scheduled to proceed by way of written submissions without the presence of the parties or their counsel. However, neither the applicants nor the respondent filed any written submissions.

[7] The motion before us being one under Rule 5(2)(b) of the Court of Appeal Rules, it is now well settled that the applicant must satisfy the Court, first that he has an arguable appeal, and secondly, that if the orders of stay or injunction that are sought are not granted, the intended appeal will be rendered nugatory. For instance, in **Ahmed Musa Ismael v Kumba Ole Ntamorua & 4 others** [2014] eKLR this Court stated:

*The principles upon which we exercise our jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules are notorious. See, for instance **DHIMAN Vs. SHAH** [2008] KLR 165; **BOB MORGAN SYSTEMS LTD & ANOR Vs. JONES** [2004] 1KLR 194. An applicant must show that he has an arguable appeal and further that unless we grant the orders sought, his appeal, if successful, will be rendered nugatory. An arguable appeal need not raise a multiplicity of explorable points, a single one would suffice.*

[8] In this case, it is not disputed that the applicants were tenants in the suit premises. Although they disputed being served with notices to vacate the premise, the learned Judge found that they were indeed served. In a replying affidavit, the respondent's Acting Legal Officer swore that the applicants were given compensation in consideration so that they vacate the premises pursuant to a consent which was adopted by the court in ELC No. 76 of 2015. The applicants have not filed any further affidavit to dispute these averments, nor have they availed any draft memorandum of appeal. The applicants have therefore not satisfied this Court that they have an arguable appeal.

[9] In addition, in their suit the applicants have indicated that their claim includes what they have spent in developing the suit premises, and claims for violation of constitutional rights. These are claims that can be adequately compensated by an award of damages.

[10] The applicants' motion was filed on 21st December, 2017 when they claimed to be under threat of eviction. The applicants have not informed the Court what the position is as of today, 3½ years later. Given that the applicants have not bothered to file any written submissions, it may be possible that they have already vacated the suit premises and it would not be appropriate for the Court to issue orders in vain.

[11] The upshot of the above is that the applicants have failed to satisfy this Court that they have an arguable appeal or that the intended appeal will be rendered nugatory if the orders sought are not granted. Accordingly, the motion dated 21st December, 2017 is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY, 2021.

W. OUKO (P)

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JUDGE OF APPEAL

W. KARANJA

.....

JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR