



REPUBLIC OF KENYA



KENYA LAW
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**Miriti v Rimberia (Environment & Land Case E002 of 2020)
[2024] KEELC 4588 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E002 OF 2020**

CK NZILI, J

JUNE 5, 2024

BETWEEN

ERINA KATHAMBI MIRITI PLAINTIFF

AND

GERALD MWITI RIMBERIA DEFENDANT

RULING

1. By an application dated March 1, 2024 the court is asked to order the Land Registrar Meru Central Land Registry to reinstate Entry No's. 1 and 2 of August 9, 2016 to L.R No. Meru/Nyayo Sirimon Scheme/540, cancel, delete, withdraw and or remove Entries No. 3 & 4 dated February 6, 2023, that were registered against the title, and to reinstate the name of the applicant in the register. Additionally, the court is asked to issue a permanent injunction restraining the respondent from in any way whatsoever interfering with the suit land and, lastly to order for the release of Kshs.50,000/= was deposited as security on June 15, 2023 to the applicant.
2. The reasons are contained on the face of the application and in the affidavit of Erina Kathambi Miriti, sworn on March 1, 2024. The applicant avers that he owns the suit land as per a title deed issued on August 9, 2016, being utilized by her son, that she only became aware of the suit in February 2023 when he was told to vacate the land, only to discover that there was a change to the ownership and a title issued on February 6, 2022, in favour of the respondent out of a decree in Meru ELC (O.S.) E002 of 2020.
3. The applicant avers that as a condition to staying the lower court decree she was ordered to deposit Kshs.50,000/=. The applicant says nothing is pending before the court and that the deposit should be released to her.
4. The application is opposed through a replying affidavit sworn by Gerald Mwit Rumberia on March 8, 2014. It is averred that as a successful litigant, the suit land was transferred to him as per a decree



dated July 13, 2022, which was later set aside. Further, the respondent avers that he has no objection to the deposit being released to the applicant. The respondent avers that upon the dismissal of his suit on July 27, 2023 and a further ruling on 29.11.2023, he filed a fresh suit, namely ELC No. E016/2023 (O.S.), which is still pending. Again, the respondent states that he was granted orders dated December 21, 2023 to safeguard his interests, which were again extended to March 13, 2024. The respondent states that he has no objection to prayer number 4 of the applicant and that the application does not reside on the land; hence, no claim can be sustained for quiet possession.

5. On July 27, 2023, this court dismissed the suit for non-compliance. By a ruling dated November 29, 2023, the court declined to review its orders dated July 27, 2023. From annexure marked GMR “2”, the respondent confirms that a new suit involving the same parties over the same matter is before Hon. Mr. Justice C. Yano, who granted orders in favour of the respondent whose suit herein was dismissed. The respondent has admitted that he instituted a fresh suit. That aspect is also admitted by the applicant, who has annexed the order as EKM 7.
6. Going by the admission made by the parties, it is unclear if they disclosed to the court in the subsequent suit the outcome of this suit. This court became functus officio on November 29, 2023.
7. The applicant, as the defendant, had no counterclaim before this court. There is no pending suit before this court out of which it can issue interim orders in favour of any party. The applicant cannot, therefore, pray for any permanent injunction whose effect would be to fly against the order issued by a court of concurrent jurisdiction.
8. The best that the court can do is to order the release of the deposit of Kshs.50,000/=. As to the prayer number 2, the parties have admitted there is a pending suit ELC No. E016 of 2023 (O.S.). It is up to the applicant in this suit to raise such issues before the court presiding over the new matter. The upshot is that I find the application lacking merits. It is dismissed with no order as to costs.
9. The deposit of Kshs.50,000/= may be released to the depositor. This file is marked as closed.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 5TH DAY OF JUNE, 2024

In presence of

C.A Kananu

Kitheka for Inoti for the defendant

HON. C K NZILI

JUDGE

