



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. E068 OF 2021**

**JOHN MARK KIRIMI.....APPELLANT**

**VERSUS**

**ROBERT MATUMBI MWORIRA.....1<sup>ST</sup> RESPONDENT**

**LYFORD MUTHURI GITANGATA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant seeks orders of stay of execution of the ruling delivered on 27.5.2021 by the lower court pending hearing and determination of this appeal. The application is supported by an affidavit sworn by John Mark Kirimi on 16.11.2021.
2. The grounds are that the respondents have threatened to implement the order appealed against by demolishing the remaining house allegedly sold to the respondent yet they do not exist on the ground due to the expansion of Nkubu-Meru road leaving only a small portion under the occupation of the appellant.
3. The appellant has attached a copy of a land registrar's and County surveyor's letter dated 2.11.2021 notifying parties about the date to visit the site and implement the court order issued on 24.9.2020 over **L.R No. Nkuene/Taita/1078, 1079 and 1081**.
4. The respondents have opposed the application through a preliminary objection dated 15.1.2022. The grounds of the preliminary objection are that the application offends **Order 9 Rule 9 of the Civil Procedure Rules** and secondly that the matter is resjudicata since similar matter has been heard and determined in **Meru Petition No. E004 of 2020**.
5. The court has looked at the ruling dated 21.5.2021. In that ruling the court dismissed the applicant's preliminary objection dated 3.10.2020, which sought the court to find the court lacking jurisdiction on the basis that what was before court was a boundary dispute whose jurisdiction is before the Land Registrar in line with **Section 18 (2) of the Land Registration Act 2012**. The court proceeded also to allow the notice of motion dated 21.8.2020 and 24.8.2020 since the appellant had not opposed the same. In other words, temporary orders of injunction were issued.
6. As regards the order dated 30.9.2020 by consent of parties, it was ordered that the County surveyor and land registrar to visit the locus in quo and establish the boundaries of **Parcel No's Nkuene/Taita/1081 and 1082** and file a report.
7. Further, in **E.L.C No. 51 of 2020**, it appears the court also gave an order dated 24.9.2020 for the County surveyor and land surveyor to visit **L.R No. Nkuene/Taita/1078, 1079 and 1082** and establish their existence of the ground and boundaries and proceed to file a report.

8. In **E.L.C. 51 of 2020**, the appellant filed a defence dated 2.6.2021.

9. The respondent has stated the suit is res judicata on account of **Meru Petition No. E 004 of 2020**.

10. The court has looked at the said judgment. At page 11, the court found as a matter of fact that the appellant was evicted vide orders issued on 4.9.2020. The appellant sought for temporary orders in that petition which were found unmerited. The petition was also struck out on 10.2.2021.

11. Looking at the ruling appealed against together with the ruling in the petition, the impression I get is that the applicant has not disclosed material facts in this application. The orders of 24.9.2020 and 30.9.2020 in the respective files have not been appealed against or set aside. The two officers are merely visiting to ascertain the boundaries and file before the court the reports.

12. There is no order attached for eviction. What the court has seen in the lower court are temporary orders of injunction.

13. The applicant cannot, through this court seek to get what was denied in the petition mentioned above. In the premises, I find that applicant has failed to demonstrate any substantial loss to be suffered if the lower court orders are not stayed.

14. Secondly, the orders were made in September 2020 and 27.5.2021 while this application was filed on 17.11.2021. The inordinate delay in filing the application has not been explained at all.

15. Thirdly, the applicant has not offered any security for the due performance of the decree should the appeal not succeed. **Arun C Sharma –vs- Ashana Raikundalia T/A A Raikundalia & Co Advocates & 2 others [2014 eKLR]**.

16. Lastly, the court must also consider if it is in the interest of justice to grant the orders sought. The applicant's ground (c) of the application is that on 10.11.2021, the respondents instructed the land surveyor and land registrar to visit the **locus in quo** and implement the ruling but were repulsed by a mob. Attached to the applicant's supporting affidavit is a letter written by the two officers. They were not under instructions of the respondent but the court orders alluded above.

17. It is apparent that the applicant is out to make the expeditious disposal of this matter impossible. He who comes to equity must come with clean hands and must also respect court orders.

18. In sum, I find the application lacking merits. The same is dismissed with costs.

19. In order to fastrack the appeal, I order for the implementation of the court orders for the scene visit in the presence of the parties, advocates on record and with full security of the OCS Nkubu police station within the next 30 days.

20. Mention on 27.4.2022.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16<sup>TH</sup> DAY OF MARCH, 2022**

**In presence of:**

Otieno C for respondent – present

Kiruai for Kimathi Kiara for appellant – present

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**



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