



REPUBLIC OF KENYA



Chatthe v Somaia (Civil Suit 10 of 2020) [2022] KEHC 14375 (KLR) (24 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL SUIT 10 OF 2020
JN KAMAU, J
OCTOBER 24, 2022**

BETWEEN

RAGHBIR SINGH CHATTHE PLAINTIFF

AND

RAJNIKANT KARSANDAS SOMAIA DEFENDANT

RULING

Introduction

1. In his notice of motion dated September 16, 2021 and filed on September 21, 2021, the defendant herein sought for orders that the plaintiff be ordered to give vacant possession and hand over the keys to him of immovable property Kisumu/Municipality/Block 12/288 (hereinafter referred to as the “subject property”) and to remove the security personnel he deployed at the subject property.
2. He swore an affidavit on September 16, 2021 in support of his said application. He averred that he was the registered owner/proprietor of the subject property which land sits his ten (10) bedroomed residential house.
3. He stated that he was informed by one Mr Suresh Mehta that in February 2019, the plaintiff informed him that he had a prospective purchaser of the subject property and requested him for the keys. He averred that being aware that he was interested in selling the property, Mr Suresh handed over the keys to the plaintiff on the understanding that they would be returned to him within a day or so after the prospective purchaser had viewed.
4. He asserted that he had been in England and had suffered four (4) strokes, a heart attack, major surgery and several hospital admissions in the last few years and hence was unable to address the issue of his subject property expeditiously. He added that his agent for the purposes of handling his affairs in relation to his property was Ramesh Mehta.



5. He contended that upon getting the keys, the plaintiff took possession, control and occupation of his subject property and stationed his own security personnel who had barred access to his employees, servants and agents. He pointed out that the plaintiff had constructively and unlawfully evicted him from his own subject property without any legal basis or colour of right. He added that as a result, he had been unlawfully dispossessed of his right, title and interest in the subject property.
6. He further stated that since February 2019, he was unable to rent out his property since the plaintiff refused to return the keys. He asserted that Ramesh Mehta informed him that the plaintiff removed all the furniture, fixtures and fittings in his house including fridges, cooker, oven, curtains, microwave, beddings, carpets, light fixtures, cutlery, glassware, pots, pans and TV sets and it was not known where his belongings had been moved to and whether they had been destroyed or disposed of.
7. He denied ever handing over his property to the plaintiff or selling his furniture, fixtures and fittings as claimed by the plaintiff. He stated that the plaintiff had also irregularly lodged a caution against the subject property and no notice was issued to him as per the provisions of section 72 of the [Land Registration Act](#).
8. It was his contention that he had suffered astronomical loss and damage as a result of the plaintiff's actions which violated his constitutional rights. He added that prospective tenants had been unable to take up the property on rent since they were unable to view the property or access it. He asserted that at one point, the US Peace Corps were willing to rent the subject property for an annual rent of US \$ 60,000 for a term of five (5) years but they were unable to do so for lack of access. He urged this court to grant the orders sought.
9. In opposition to the said application, on March 3, 2022, the plaintiff filed grounds of opposition dated March 2, 2022. He contended that the defendant's application was bad in law, misconceived, misbegotten and an abuse of the process of the court. He denied being in possession and/or occupation of the subject property or having received or obtained the keys of the subject property from the defendant. He added that the court had no jurisdiction to entertain, hear and determine issues relating to the subject property which jurisdiction lay with the environment and land court.
10. The defendant's written submissions were dated and filed on March 22, 2022 while those of the plaintiff were dated and filed on March 21, 2022. This ruling is based on the said written submissions which parties relied on in their entirety.

Legal Analysis

11. The defendant submitted that it was not in dispute that he owned the subject property and as such, the plaintiff had no legal right or claim to the property and was therefore entitled to vacant possession since the plaintiff was in possession illegally without any court order, judgment and/or ruling justifying his actions.
12. He contended that the plaintiff ought to have sworn an affidavit denying that he obtained the keys from Suresh Mehta or any other person and denying that he had possession and occupation of the property and that the very fact that he did not wish to rebut the averments on oath led to the conclusion that he was not being honest.
13. He was emphatic that he was entitled to enjoy proprietary rights over the subject property as enshrined in section 24 of the [Land Registration Act](#). He added that the plaintiff had not given substantive reasons to justify the continued retention of the keys and his possession over the subject property. He asserted that the plaintiff's challenge on jurisdiction was baseless and added that the plaintiff did not submit on the same.



14. He pointed out that the issue in contention in the suit herein was plaintiff's claim for liquidated sum which claim he disputed and challenged. He explained that the subject property was inextricably intertwined with the issues in the suit as per the documents filed by the plaintiff.
15. He further submitted that this application was the first step in an action intended to lead to application to amend the defence so as to include a counter claim with regards to the loss of rental income and movable properties occasioned by the plaintiff's acts and should this application be granted, it would enable him compute the quantum of loss in his counter claim up to a specific date.
16. He further argued that the jurisdiction of the court to deal with the issue herein was grounded on its inherent powers provided under section 3A of the *Civil Procedure Act* as he had only sought return of the keys to his subject property, removal of the security guards engaged by the plaintiff and for the plaintiff to vacate the subject property, all of which were well within the jurisdiction of this court. He was categorical that the prayers sought did not sound within section 13 of the *Environment and Land Court Act*. He urged the court to allow his application.
17. On his part, the plaintiff submitted that the defendant's application was based on a presumption that he had acquired, taken over and retained possession/occupation of the subject property but that the defendant only tendered evidence that he was the owner and proprietor of the said property and not that he had taken the keys and/or taken possession and/or in occupation of the subject property and consequently, the application had no foundation.
18. The defendant submitted that this court had no jurisdiction to hear and determine this matter. This court found prudent to consider as a preliminary matter.
19. Section 13 of the *Environment and Land Court Act* No 19 of 2011 provides as follows: -
 - “In exercise of its jurisdiction under article 162(2)(b) of the *Constitution*, the court shall have power to hear and determine disputes:
 - a. Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. Relating to compulsory acquisition of land;
 - c. Relating to land administration and management;
 - d. Relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
 - e. Any other dispute relating to environment and land.”
19. It was not in dispute that defendant was the registered owner of the subject property. The orders sought in the present application related to an order for vacant possession of the property. It was therefore clear that the dispute was not one that fell within the ambit of section 13 of the *Environment and Land Court Act*. The plaintiff's objection that the dispute herein did not fall within the jurisdiction of this court thus fell by the wayside.
21. The above notwithstanding, as the issues were still not clear to this court, it could not determine whether it was a dispute relating to land which would then mean that the dispute would have to be resolved by the Environment and Land Court. Suffice to state that the High Court has jurisdiction to order vacant possession of a property.



22. The defendant adduced his evidence by way of affidavit evidence. On the other hand, in his grounds of opposition, the plaintiff denied being in occupation and/or in possession of the subject property and/or being in possession of the aforesaid keys.
23. It was evident that the orders sought for vacant possession could not be granted at an interlocutory stage and based on affidavit evidence. In addition, the said order could not be granted as the defendant had not sought the same in his pleadings.
24. This court nonetheless came to the firm conclusion that this was not an application that it could grant without hearing the parties in a trial due to accusations and counter-accusations between the plaintiff and the defendant herein.

Disposition

25. For the foregoing reasons, the upshot of this court's decision was that the defendant's notice of motion application dated September 16, 2021 and filed on September 21, 2021 was not merited and the same be and is hereby dismissed with costs to the plaintiff herein.
26. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER 2022

J. KAMAU

JUDGE

