



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. E217 OF 2021

IKERE GITAU.....PLAINTIFF/APPLICANT

-VERSUS-

KAMAU TICHU.....DEFENDANT/RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion dated 17th May, 2021 brought by the plaintiff/applicant and supported by the grounds laid out on its face and the facts stated in the affidavit of advocate **Peter Kiiru Kamau**. The following are the orders being sought therein:

i. Spent.

ii. THAT Nairobi HCCC 395 of 1997 be placed before the Honourable Judge together with the application.

iii. THAT the firm of P. Kiiru Kamau & Company be allowed to come on record for the plaintiff post-judgment.

iv. THAT order number 1 of the decree issued on 2nd August, 2010 and eviction order issued on 15th October, 2014 be amended to read as follows:

v. "That an order for eviction be and is hereby issued against the defendant who shall be removed from L.R. No. Nyandarua/South Kinangop/431; to that intent, the OCPD Kinangop area shall provide security and manage the said eviction process in an effective manner and the District Surveyor Nyandarua South shall be present with his or her team and to indicate the beacons separating L.R. No. Nyandarua/South Kinangop/431 from L.R. No. Nyandarua/South Kinangop/430."

vi. THAT this Honourable Court be pleased to grant any other order, relief and/or further orders or reliefs as it may deem fit and necessary to grant in the interests of justice and fairness.

2. In opposing the Motion, the defendant/respondent put in Grounds of Opposition dated 21st July, 2021 and swore a replying affidavit on 11th August, 2021; to which the applicant rejoined with a supplementary affidavit sworn by advocate Peter Kiiru Kamau on 26th August, 2021.

3. The Motion was dispensed with through written submissions. I have considered the grounds featured in the Motion; the facts deponed in the affidavits sworn in support of and in opposition thereto; the Grounds of Opposition and the contending written submissions.

4. It is clear that the orders sought in the Motion are threefold in nature. It is important to first address the order seeking leave for the firm of P. Kiiru Kamau & Company to come on record for the plaintiff post-judgment.

5. On the one part, advocate Peter Kiiru Kamau states that he has instructions from the applicant to come on record in Nairobi HCCC 395 of 1997 post-judgment since he is also acting for the applicant in Nakuru High Court Petition No. 37 of 2011. The respondent on the other part argues that the advocate on record in Nairobi HCCC 395 of 1997 has not consented to the change of advocates and hence the said advocate is still on record for the applicant herein.

6. The provisions of Order 9, Rule 9 of the Civil Procedure Rules, 2010 provides as follows:

"When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

7. Upon my perusal of the record, in the absence of disclosure by the parties, it remains unclear which firm of advocates represented the applicant in Nairobi HCCC 395 of 1997 at all material times. There is also nothing to indicate that the applicant’s erstwhile and proposed advocates entered into a consent for a change of advocates.

8. Furthermore, there is nothing to indicate that the erstwhile advocate for the applicant was served with a copy of the instant Motion.

9. There is no evidence to indicate that the outgoing firm of advocates was notified of the intended change of advocates and on that basis, I am hesitant to grant the current proposed advocate, leave to come on record. I therefore see no reason to consider the remaining orders sought in the Motion at this point since the application was filed by an advocate improperly on record.

10. In the end therefore, the Motion dated 17th May, 2021 is hereby dismissed with costs to the defendant/respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent