



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 329 OF 2016

WINFRED KABURU KINYUA.....PLAINTIFF

VERSUS

KANWALJIT SINGH CHADDA.....DEFENDANT

RULING

The Defendant moved this court by way of Notice of Motion dated 3rd of May, 2017. The Application is expressed to be brought under order 40 Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3 & 3A of the Civil Procedure Act. The defendant seeks the following orders;

- i.** An order setting aside the orders granted on 16th March, 2017.
- ii.** An order for eviction of the plaintiff from land premises known as LR NO. 1870/iv/157, pilipili way off Rhapta Road, Nairobi.
- iii.** An order directing Officer commanding Muthangari police station to supervise the eviction exercise.

The Motion is based on the grounds that are listed in the body of the application and supporting affidavit sworn on 3rd May, 2017. According to the Defendant, a ruling had been made that declared that there was a tenancy relationship between the Defendant and the plaintiff. Based on the same, a temporary order of injunction was issued restraining the Defendants, his agents, employees and or servants from evicting, alienating, transferring or parting with possession or in any way dealing or interfering with peaceful occupation of the plaintiff on land premises known as LR No. 1870/iv/157, pilipili way, off Rhapta Road, Nairobi until the determination of the Suit, on condition that the plaintiff continues to pay rent to the defendant. The defendant maintains that the plaintiff has continued to enjoy quiet possession of the property without paying rent as directed by the court. Due to this, the Defendant via this application is praying for the orders to be set aside and an eviction order to be issued against the plaintiff.

The plaintiff filed grounds of opposition which provided amongst other things that the application is incompetent and totally defective, that the Defendant has not put in, a counterclaim and that the application is an abuse of the court process, that the application lacks merits and ought to be dismissed.

The plaintiff has not responded to allegations of non compliance with the order of paying the rent. All he had to say through his application which was dismissed for non attendances that the property is damaged out of which he cannot raise money to pay rent.

Section 65 of the Land Act 2012, obligates the tenant to pay rent failure of which warrants termination.

It provides that a landlord may terminate the lease by serving a notice of intention to terminate the lease on the lessee where-

i) Any rent is unpaid for one month after the due date of payment, whether or not a demand, in writing, for payment has been made by the lessor or an agent of the lessor;

The termination can be done by giving a notice to the tenant. I take note of the earlier Ruling of the Court that expressed the relationship between the plaintiff and the defendant to be that of landlord/tenant. By virtue of the order of this Honourable court, the tenant was to remain in possession subject to payment of rent. The Tenant has defaulted. I proceed to allow prayers 2, 3 and 4 of the application dated 3/5/2017. The defendant is awarded the costs of the application.

It is so ordered.

Dated, Signed and Delivered at Nairobi this **19th** day of **October, 2017**.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... for the Plaintiff

..... for the Defendant