



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT ELDORET

E & L CASE NO. 145 OF 2017

STEPHEN KIMITEI ARAP SANG.....PLAINTIFF

VERSUS

DOMINIC KIPROTICH.....1ST DEFENDANT

JONAS METTO.....2ND DEFENDANT

GLADYS CHELEGAT.....3RD DEFENDANT

EDWIN CHEBET.....4TH DEFENDANT

EMMANUEL KOLIL.....5TH DEFENDANT

HEZEKIA KIPTOO.....6TH DEFENDANT

DANIEL OKONG'O.....7TH DEFENDANT

DAVID LETTING.....8TH DEFENDANT

RODAH TOO.....9TH DEFENDANT

RULING

1. This is a ruling in respect of two separate applications. The first one is dated 12/5/2021. It is brought by the 8th and 9th Defendants. It seeks enlargement of time within which to pay the balance of the decretal sum. The second application is dated 1/7/2021. It is brought by the Plaintiff and it seeks police assistance during the process of eviction.

BACKGROUND

2. The Plaintiff had filed a suit against the Defendants in which he sought for among other reliefs eviction orders against the Defendants. The Plaintiff and the Defendants later entered into a consent which compromised the suit. The Defendants were allowed to purchase the suit property in terms of the consent recorded on 5/12/2017.

3. The Defendants did not pay the balance of the decretal sum as agreed. The Plaintiff filed a notice of motion dated 3/9/2019 in which he sought eviction orders. The Defendants also filed a notice of motion dated 11/12/2019 in which they sought suspension of a ruling in respect of notice of motion dated 3/9/2019 which had been set for ruling on 17/12/2019. The Defendants also sought extension of time within which to settle the decretal sum by six months.

4. In a ruling delivered on 3/3/2021 the court found no merit in the Defendants' application dated 11/12/2019 which was dismissed with costs. The court nevertheless gave the Defendants 45 days within which they were to clear the balance of the decretal sum failing which, the Plaintiff was to evict the Defendants after refunding the amount so far paid within 60 days.

THE FIRST APPLICATION

5. In this application, the Defendants contend that out of the decretal sum of Kshs 3,000,000/= they have paid Kshs 1,550,000 leaving a balance of Kshs 1,450,000/= The Defendants state that they are keen on settling the balance of the decretal sum but their efforts have been hampered by the Covid 19 pandemic. They state that they have been verbally warned by the OCS-Yamumbi Police Station of the intended

eviction.

6. The Defendants state that they have carried extensive developments on the suit property and that if they were to be evicted, they will incur huge losses. It is on this basis that they seek extension of time within which to clear the balance of the decretal sum.

7. The Plaintiff opposed the Defendants' application based on a replying affidavit sworn on 28/5/2021. The Plaintiff contends that the Defendants' application is an abuse of the process of the court in that what the Defendants are seeking is a vacation of the terms of the consent of 5/12/2017 and is contrary to the court's ruling of 3/3/2021.

8. The Plaintiff further contends that the Defendants' have failed to comply with the consent order and that the payment of a further sum of Kshs 500,000 was made outside the 45 days extension granted by the court. The Plaintiff contends that he is entitled to a speedy resolution of this case and therefore no extension of time should be granted.

9. In a supplementary affidavit sworn on 22/6/2021, the Defendants state that they have made further payment of Kshs 200,000/= leaving a balance of Kshs 1,250,000/=

ANALYSIS

10. The parties herein were given 7 days within which to file written submissions. At the expiry of the 7 days given on 3/11/2021, no submissions had been filed. I have considered the Defendants' application as well as the opposition to the same by the Plaintiff. The only issue for determination is whether the Defendant should be granted extension of time within which to clear the balance of the decretal sum.

11. The consent which the parties entered into on 5/12/2017 was clear in its terms. The purchase price was agreed at Kshs 3,000,000. The Defendants paid Kshs 300,000/= on the date the consent was recorded. The balance of Kshs 2,700,000/= was to be paid by instalments of Kshs 225,000/= with effect from 5/12/2017 and thereafter on the 5th day of every subsequent month. It was also a term of the consent that if there was to be default of any two consecutive instalments, the Plaintiff was at liberty to refund the balance outstanding less Kshs 300,000/=

12. It is clear that the Defendants defaulted in payment of the balance of the decretal sum. When the Plaintiff moved court for eviction orders, the Defendants attempted to seek extension of time which was rejected but the court graciously gave them 45 days within which to clear the balance. So far there is an outstanding balance of Kshs 1,150,000/=

13. The consent was recorded on 5/12/2017. If the Defendants were serious in clearing the balance, they should have cleared it. Covid 19 pandemic came in much later and should not be an excuse for not paying. The Defendants did not take advantage of the 45 days which the court granted. Granting any further extension will amount to allowing an application which had already been dismissed.

DISPOSITION

14. From the above analysis, I find that the Defendants' application has no merit. The same is dismissed with costs to the Plaintiff.

It is so ordered.

THE SECOND APPLICATION

15. In this application, the Plaintiff seeks that the Defendants be evicted from the suit property and that the structures thereon be demolished. The Plaintiff also seeks for an order that the OCS Langas Police Station or OCS Yamumbi Police Station do ensure compliance with the eviction order.

16. The Plaintiff contends that he has already availed funds for refund to the Defendants' Advocate and that it is necessary that police do oversee the eviction as per the eviction orders granted on 3/3/2021.

17. The Defendants have opposed the Plaintiff's application through a replying affidavit sworn on 9/7/2021. The Defendants contend that they are facing hard economic times and they tried to clear the decretal sum which now stands at Kshs 1,150,000/=. They argue that they will be rendered homeless should the eviction be undertaken.

18. I have considered the Plaintiff's application as well as the opposition to the same by the Defendants. The Defendants have had since 2017 to clear the decretal sum. They have not. They were graciously given an extension of 45 days which they did not utilize to clear the balance. The Plaintiff is ready to refund what he has already been paid by the Defendants. The eviction orders were granted by this court in a ruling delivered on 3/3/2021. The only remaining thing is implementation of the eviction order with assistance of police.

a) I therefore allow the application dated 1/7/2021 as follows: The Defendants be evicted from Eldoret Municipality Block 15/1829 and the structures thereon demolished

b) The demolition and eviction shall be undertaken after 45 days from the date of this ruling.

c) The OCS Yamumbi Police Station is hereby ordered to provide security during the eviction and demolition of structures on LR Eldoret Municipality Block 15/1829.

d) The costs of this application be borne by the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF JANUARY 2022.

E. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF:

MS.KIMELI FOR MR. TOROREI FOR PLAINTIFF

MR. MOMANYI FOR DEFENDANTS

COURT ASSISTANT: MERCY

E. OBAGA

JUDGE

20/1/2022