

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 204 OF 2013

GULBANO ABDULRASAL ACHU PLAINTIFF

- V E R S U S -

FATMA ISMAIL DEFENDANT

RULING

[1] The applicant filed this suit and wants the respondent evicted out of land title no. Mombasa/XXVII/86 which she claims she acquired for valuable consideration in 2011. She avers that she has a title deed and that the premises comprises of two flats, one downstairs and the other upstairs. She states that the respondent who is her daughter-in-law occupies the one upstairs. She claims she wants to lease the same out for Kshs. 40,000 and use the money for her own upkeep. She avers that her daughter-in-law does not pay rent for the premises. Her prayers in the plaint and in the suit are the same.

[2] The respondent filed a replying affidavit and admitted that she indeed resides in the apartment upstairs. She however states that she and her husband contributed Kshs. 2,200,000/- and her own mother contributed Kshs. 300,000/- towards the purchase of the said house. She annexed a bank withdrawal slip of Kshs. 2,500,000/- and a bank payment slip of Kshs. 300,000/- in the applicant's name. She avers that after paying the purchase price her husband and her were given the one flat and they moved into the said flat in 2008. She averred that she carried extensive renovations on the flat. She stated that she is neither a tenant nor a trespasser on the premises. She stated that her mother-in-law was registered as the owner of the flat in trust for her and her husband.

[3] These are fundamental issues that can only be canvassed properly during the trial. They cannot be tried in a summary manner as is requested in the application herein. Hearing the application and determining the same would be to determine this suit in a summary manner without hearing the parties. It would not be desirable to do so. The notice of motion dated 18th October, 2013 is dismissed with costs to the respondents.

Dated and delivered in open court at Mombasa this 30th day of October 2014.

S.MUKUNYA

JUDGE

30.10.2014

In the presence of:

Miss Njoroge advocate for the plaintiff

Mr Omolo for the defendant