



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 132 of 2013

SOFIA W KAMAU.....PLAINTIFF

=VERSUS=

NJOKI KAMAU & 3 OTHERS.....DEFENDANTS

RULING

1. By way of Notice of Motion dated 28/1/2013, the Applicant herein **Sofia Wanjiru Kamau** has sought for various orders against the Defendants/ Respondents herein. The various orders are:-

a) Spent

b) That the Defendants/ Respondents herein be evicted from plot known as **LR No. 36/V/37** situated at **Mlango Kubwa** area in Nairobi within **Starehe** Division pending hearing and determination of this suit.

c) That the officer Commanding Pangani Police Station be served with the order to enhance compliance and that peace and order prevails.

d) That the costs of this application be provided for.

2. The application is premised on the grounds stated on the face of the application and on the Supporting Affidavit of **Sofia Wanjiru Kamau**. The applicant stated that she is the bonafide, lawful and registered proprietor of that entire plot known as LR No. 36/V/37 situated at Mlango Kubwa area of Starehe **Division** in Nairobi. She further averred that the Respondent who are strangers to the Applicant have trespassed and encroached on the suit premises without the applicants authority permission and/ or consent and have erected semi- permanent structures thereto defying several quit notices by the applicants Advocates, area Chief and District officers.

That the Police and provincial Administration Officers cannot resolve the impasse without the Court order. That the applicant proprietary rights have been violated and/ or infringed and applicant continues to suffer irreparable loss and damages. She further stated that there is imminent danger of the suit premises being damaged or wasted and she cannot access the suit premises for inspection due to hostile Respondents. Applicant stated that no prejudice will be occasioned by granting the orders sought as the Respondents entry into the premises is illegal and unlawful abinitio as they are not proprietors, tenants and/ or licensees of the suit premises.

3. In the supporting Affidavit, the Applicant deposed that she purchased LR No. 36/V/37 from Mathare Quick Services ltd on 3/10/1997 as per annexure marked **SWK 1**. She was further issued with a Title deed in her favour as the absolute proprietor as per annexure **SWK2**. She further deposed that she took vacant possession of and occupation of the plot since then and has been paying Nairobi City Council Land Rates

as per annexures SWK 3. Further, when she travelled up country in December 2011, the Respondents invaded her premises without her permission and/ or consent/ authority.

Furthermore, the Respondents erected and or built semi – permanent structures as evidenced by annexures **SWK 4**. The Respondents entered into the said land without the knowledge, permission, consent, approval and/ or authority from the applicant and that amounts to the trespass and infringement of her proprietary rights. Applicant further averred that due to the Respondents unlawful and illegal acts, she cannot gain access to her property and has been deprived of her income and her efforts to evict the Respondents have been fruitless as the police cannot act without a court order.

4. It was the applicants’ contention that she has been subjected to alot of suffering, pain, mental anguish, loss and damages and he has suffered irreparable loss and damages. She further stated that she has established a prima facie case to warrant the granting of the order sought. That again the balance of convenience dictates upon granting of the orders sought to mitigate further loss and damages and to stop the illegal and unlawful act by the Respondents. Applicants prayed for granting of the orders. On the date of hearing of this application, the Respondent s, were not in Court though served with the hearing Notices as evidenced by affidavit of service sworn by Gerald Irungu Mbutia on 15/3/2013. Even if the Notice of Motion dated 28/1/2013 is not opposed, has the applicant demonstrated that she deserves the orders sought?. The Applicant seeks for an eviction order.

5. Applicant seeks that the Court do order that the Defendants be evicted from **LR No. 36/V/37** situated in **Mlango Kubwa** in Nairobi and that Officer Commanding Pangani Station be served with the order to enhance compliance and that peace and order do prevail. Plaintiff seeks for an eviction order and/ or vacant possession of the suit premises. An eviction order is a final order which determines the case. The Applicant has attached several documents to prove that she is the lawful owner of the plot in question. However, if the Court grants the orders sought, then this suit would have been determined in an interlocutory stage. Then what will happen at the main suit?.

The court finds that it is not proper to grant the orders sought herein by the applicant at the interlocutory stage. The Applicant should set the main suit for hearing so that the Court can determine the issue of ownership and whether the plaintiff is entitled to her claim or not.

For the above reasons, the Court declines to allow the applicant’s Notice of Motion dated 28/1/2013. The same is dismissed.

Costs in the Cause.

Dated, signed and delivered this 17th day of May, 2013

L.N. GACHERU
JUDGE

In the Presence of:-

.....For the Plaintiff/Respondent

.....For the 1st Defendant

.....For the 2nd Defendant

.....For the 3rd Defendant

.....for the 4th Defendant

.....Court Clerk

L.N. GACHERU
JUDGE