



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 417 OF 2012

HYDRO DEVELOPERS LIMITED.....PLAINTIFF

VERSUS

PETER MUANGE MWANZOU.....1ST DEFENDANT

JOSEPH LENGISHILI2ND DEFENDANT

BRITHER MORANG'A3RD DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 24/8/12 brought under Order 51 Rule 1 of the Civil Procedure Rules and Sections 3, 3A and 63E of the Civil Procedure Act. It seeks the following orders:

1. That this honourable court do declare that the Defendants continued occupation of the Plaintiff's parcel of land known as L.R. NO. 209/11878 situated in the City of Nairobi (hereinafter referred to as the "Suit Property") is unlawful and constitutes illegal trespass.
2. That this honourable court be pleased to issue an eviction order evicting the Defendants by themselves, their agents, servants, employees, legal representatives or otherwise howsoever from the Suit Property pending the hearing and determination of this Suit.
3. That the Officer Commanding Industrial Area Police Station and the Officer-In-Charge Administration Police Industrial Area to provide security in the enforcement of the orders above.
4. That Wright Auctioneers do evict the Defendants as per orders above.
5. That costs of this Application be in the Cause.

The application is based on the grounds set out on the face of it as well as the Supporting Affidavit of Mohamed Tahir Kana in which he stated that the Plaintiff/Applicant is the registered proprietor of the Suit Property. A certificate of title bearing the name Clesoi Complex Property Limited was produced as an annexure. He further stated that the Defendants are in occupation of the Plaintiff/Applicant's Suit Property as intruders and trespassers without any justification legal, contractual or otherwise.

He further stated that since filing of this suit, the Defendants have built temporary structures on the Suit Property and have interfered with the sewerage and water supply pipes causing the same to overflow into the factory affecting normal factory operations. Further, he stated that the Defendants have also been lighting fires on the Suit Property and have illegally connected electricity to the said structures thereby endangering factory operations and the lives of factory employees. He also averred that despite the repeated requests to the Defendants to vacate the Suit Property, those requests have been willfully ignored by the Defendants who are continuing with their illegal trespass and occupation.

The application is not contested. Though service was effected on them, no Defendant filed a Replying Affidavit in response to the Plaintiff/Applicant's application.

The hearing of this application took place on 17th April 2013 when Counsel for the Applicants made his submissions to this Court, all of which have been taken into consideration.

Looking at the nature of orders sought in this application, namely a declaration that the Defendant's occupation of the Suit Property is unlawful and constitutes illegal trespass as well as the request for an eviction order are both in my opinion final orders which cannot be granted at this interlocutory stage of these proceedings. Those constitute final orders which can only be granted after full trial.

Further, there is the question whether the Plaintiff - Hydro Developers Limited is one and the same company as Clesoi Complex Property Limited. No Certificate of Change of Name has been produced.

For the reasons stated above, this court declines to allow the application. The same is dismissed. No order as to costs.

SIGNED AND DELIVERED AT NAIROBI ON THE 14th

DAY OF JUNE 2013

MARY M. GITUMBI

JUDGE