



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO.238 OF 2004

**PENINAH WAMBUI MUGO..... APPLICANT/PLAINTIFF
VERUS**

MOSES NJARAMBA1ST RESPONDENT/DEFENDANT

MARY MUTHONI NJARAMBA.....2ND RESPONDENT/DEFENDANT

RULING

This court by its ruling delivered on 3rd June, 2011 ordered the 2nd respondent to settle outstanding rates and to continue to pay the same as they accrue pending the determination of the suit. She has not complied with that order and the applicant has now moved the court for orders that the 2nd respondent be directed to pay all the outstanding rates with the Municipal Council of Nyahururu within 14 days from the date of the order and that in default the 2nd respondent's statement of defence be struck out and the applicant to be allowed to take possession. In the preliminary objection, the 2nd respondent's counsel argues that the orders sought if granted will render the 2nd respondent's counter-claim nugatory and that the applicant cannot purport to collect rates on behalf of the council.

The first prayer is similar to the prayers granted in the ruling of 3rd June, 2011, save that in the latter no time limit for the settlement of the rates was specified. The 2nd respondent has thirty (30) days within which to settle the outstanding rates to show efforts towards settling the same.

The prayer for striking out the 2nd respondent's defence and for orders permitting the applicant to take possession are clearly not available. Striking out procedure is provided for under **Order 2 rule 15** of the **Civil Procedure Rules**. The principles for striking out are well settled and do not include the matters deposed in this application. Secondly, to allow the applicant to take possession of the suit property as prayed without hearing evidence would be draconian and unprocedural.

The parties are advised to have the matter fixed for hearing so that their rights over the property can be finally determined. To the extent that the 2nd respondent is ordered to settle the rates or to demonstrate efforts towards payment within 30 days, this application succeeds. But I make no orders as to costs.

Dated, Signed and Delivered at Nakuru this 23rd day of March, 2012.

W. OUKO

JUDGE