



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 149 OF 2008

ESTHER NGENDO MWIKO:.....PLAINTIFF

VERSUS

SORATHA INVESTMENT LIMITED:.....1ST DEFENDANT

ASEGRALI ABDUL HUSSEIN MAMUJEE:.....2ND DEFENDANT

FAKHRUDIN MOHAMMED ALI:.....3RD DEFENDANT

MOHSINALI MOHAME ALI DIAMOND:.....4TH DEFENDANT

ADAMALI MOHSINALI MOHAMED ALI ESSAJI:.....5TH DEFENDANT

RULING

The plaintiff in this suit applies by way of a **Notice of Motion** seeking an order of the court that the rent payable to the 1st defendant from tenants on LR No. Eldoret Municipality be deposited monthly in a joint interest bearing account in the names of the parties' advocates. She has invoked the provisions of order 41 Rules 1, 2 and 11 of the Civil Procedure Rules, section 3A of the Civil Procedure Act and all enabling provisions of the Law.

The reasons for the application are that she has claimed the same title by way of adverse possession which claim will take long to determine and it may not be possible to recover the said rents from the 1st defendant at the end of the trial in the event she eventually succeeds.

The defendants have opposed the application by way of an affidavit sworn in reply by **Mahsoir Sorathia** who avers that he has done so with the authority of all the defendants. In the affidavit, he has deponed, *inter alia*, that the plaintiff's main suit is infact an abuse of the process of the court given the number of times the applicant and her deceased husband have been in court over the same matter.

Counsel agreed to file written submissions which were duly in place by 31st October, 2011. The submissions merely reiterate the stand-points taken by the parties in their respective pleadings and affidavits.

I have considered the application, the pleadings, the affidavits on record and submissions of counsel. The only reason why the plaintiff has made this application is that she has lodged an adverse possession claim against the defendants. In her view because it will take time to dispose of her claim the rents from the suit property should be deposited in an account in the joint names of the advocates. There is no other basis for her application. Nowhere in her affidavit does she allude to the strength of her claim and nowhere does she explain her belief that should she eventually succeed in her claim, the defendants will have no means to refund the rents should the same ultimately be found to be refundable.

I have also perused the Originating Summons and the response thereto. I have further perused copies of previous proceedings exhibited by the defendants. I have formed a prima facie view that there is no basis for making the order now sought by the plaintiff. I should say no more otherwise I may put the trial judge in a bind.

This application has no merit and is dismissed with costs.

It is so ordered

**DATED AND DELIVERED AT ELDORET
THIS 7TH DAY OF DECEMBER, 2011**

**F. AZANGALALA
JUDGE**

Read in the presence of:

Mr. Kigen H/B for Naikuni for the Plaintiff and

Mr. Kitur H/B for Mr. Manani for the Respondent

**F. AZANGALALA
JUDGE**

7TH DECEMBER, 2011