



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

E.L.C. NO. 62 OF 2018 (OS)

ROSE WANJIRU NDIRANGU alias ROSE WANJIRU

MUGWANJA.....PLAINTIFF

VERSUS

GRACE WANGARI NJOROGE.....DEFENDANT

RULING

A. THE DEFENDANT'S APPLICATION

1. By a notice of motion dated 17th December, 2019 brought under the provisions of **Sections 3A and 80 of the Civil Procedure Act (Cap. 21), Order 45 Rule 1 of the Civil Procedure Rules (the Rules) and all enabling provisions of the law**, the Defendant sought variation, setting aside or review of the *status quo* orders made on 15th January, 2019 by Hon. Justice M.C. Oundo.

2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Defendant on 17th December, 2019. It was contended that the Defendant was the registered proprietor of *LR. No. Nyandarua/Oljoroorok Salient/2630 (the suit property)* and that the orders of 15th January, 2019 were contradictory and that they amounted to a mandatory injunction.

3. The Defendant further contended that she was the one in occupation and use of the suit property at the time the impugned orders were made and that the effect of the orders had rendered her a squatter on her own land as she was unable to cultivate or utilize the suit property. It was her case that since she had no legal representation at the material time she did not appreciate the gravity of the orders sought by the Plaintiff.

B. THE PLAINTIFF'S RESPONSE

4. The Plaintiff filed a replying affidavit sworn on 30th May, 2020 in opposition to the said application. It was disputed that the Defendant had been in possession of the suit property at all the material times. The Plaintiff further contended that the Defendant had failed to demonstrate the grounds for review of the *status quo* orders made on 15th January, 2019. It was further contended that there had been undue delay in filing the instant application hence the same should be dismissed.

C. DIRECTIONS ON SUBMISSIONS

5. When the application was listed for hearing on 27th May, 2020 it was directed that the same shall be canvassed through written submissions. The material on record shows that the Plaintiff filed her written submissions on 7th July, 2020 whereas the Defendant's submissions were not on record by the time of preparation of the ruling.

D. THE QUESTION FOR DETERMINATION

6. The court has considered the Defendant's notice of motion dated 17th December, 2019 together with the supporting affidavit and annexures thereto, the Plaintiff's replying affidavit in opposition thereto as well as the submissions on record. The court is of the opinion that the main question for determination is whether or not the Defendant has made out a case for the variation, review, or setting aside of the orders made on 15th January, 2019.

E. ANALYSIS AND DETERMINATION

7. By its orders made on 15th January, 2019 the court directed that the *status quo* shall be maintained and that none of the parties shall cut down trees; destroy crops or vegetation; plough the land; or plant any vegetation on the suit property pending the hearing and determination of the suit. The record shows that the court considered the fact that the Defendant was unrepresented and that she had not effectively defended the application but it declined to order her eviction from the suit property before the suit could be heard and determined.

8. It is pertinent to note that upon making the said orders on 15th January, 2019 the court directed the parties to comply with **Order 11 of the Rules** within 21 days with a view to setting down the suit for hearing. The record further shows that the court gave directions on the hearing of the suit under **Order 37 of the Rules** and then fixed the suit for mention on 12th March, 2019 to confirm compliance and fix a hearing date.

9. It is apparent from the record that the parties have never complied with **Order 11 of the Rules** as directed on 15th January, 2019. Instead of complying with the pre-trial directions the Defendant chose to file the instant application for review, variation or setting aside of the orders made on 15th January, 2019.

10. The provisions of **Order 45 Rule 1 of the Rules** on review stipulate as follows:

“Any person who considers himself aggrieved:

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed by this Act, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

11. The court has considered the material on record and is unable to discern the discovery of any new or important matter or evidence or any error apparent on the face of the record to warrant a review of the orders made on 15th January, 2019. The court was fully aware that the Defendant was unrepresented in the matter. The court further appreciated that she was in occupation of the suit property or part thereof hence the reason it declined to order her eviction before the trial of the action.

12. There is no indication on record that the court made the *status quo* and other orders on 15th January, 2019 because the Defendant did not produce a copy of her title deed. The mere fact that the Defendant was inconvenienced by the orders preventing her from cutting down trees and cultivating the suit property cannot be a sufficient basis for granting a review or setting aside of those orders. The court is thus of the opinion that the Defendant has not satisfied the legal requirements for the grant of the orders sought.

13. The court is further of the opinion that there is another reason for declining the orders sought. The material on record indicates that whereas the impugned orders were made on 15th January, 2019, the Plaintiff did not file the instant application until 11 months later. This delay was not satisfactorily explained. The law requires that an application for review should be made expeditiously and without unreasonable delay. Although the Defendant was in jail for part of the period of delay, the entire period of delay was not adequately accounted for.

F. CONCLUSION AND DISPOSAL ORDER

14. The upshot of the foregoing is that the court finds no merit in the Defendant’s notice of motion dated 17th December, 2019. Accordingly, the court makes the following orders:

(a) The notice of motion dated 17th December, 2019 be and is hereby dismissed with costs to the Plaintiff.

(b) The parties are hereby directed to comply with the pretrial directions given earlier within 30 days with effect from the date hereof.

(c) The parties shall file their respective case summaries, statement of issues, and pre-trial bundles duly bound and paginated within the same period.

(d) The matter shall be mentioned on 3rd March, 2021 to confirm compliance and fix a hearing date.

RULING DATED and SIGNED at NYAHURURU and DELIVERED via Microsoft Teams Platform this 2nd of February, 2021.

In the presence of:

Ms. Wanjiru Muriithi for the Plaintiff

No appearance for the Defendant

Court Assistant – Ropita

Y.M. ANGIMA

JUDGE

02.02.2021