



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 714 OF 2017**

**MICHAEL WAITITU KARANU.....PLAINTIFF**

**VERSUS**

**LAWRENCE NJOROGE MBURU.....DEFENDANT**

**RULING**

The application for determination is the Plaintiff's Chamber Summons application dated the 23<sup>rd</sup> July, 2019 brought pursuant to Order 22 Rules 26, 28(1) and 32 including Order 50 Rule 1 of the Civil Procedure Rules; Section 1A, 1B and 3A of the Civil Procedure Act. The Plaintiff seeks eviction orders against the Defendant from half of land parcel number NGONG/NGONG/29050 hereinafter referred to as the 'suit land', as shall be determined by the surveyor after subdivision of the said property into two equal portions as had been directed by the judgement of this court dated the 15<sup>th</sup> February, 2018. Further, that the eviction be carried out and/or commenced by the OCPD Ongata Rongai Police Station and/or an officer appointed by him/her. The application is premised on the grounds on the face of it as well as the supporting affidavit of HENRY KAMAU NYAGA who is an advocate in conduct of the matter on behalf of the claimant. He avers that there exists a judgement for this suit dated the 15<sup>th</sup> February, 2018 in favour of the Plaintiff in terms of inter alia ownership and subdivision of the suit land. Further, there exists a Decree of the Court dated the 8<sup>th</sup> March, 2018 tabulating the Orders and Costs granted in favour of the Plaintiff. He confirms that there exists Warrants of Attachment of movable property in execution of Decree for money dated the 13<sup>th</sup> August, 2018 as well as Warrant of Sale of Property in execution of the Decree for money dated the 13<sup>th</sup> August, 2018. He contends that the Court should grant the orders as delivered in the Judgement and Decree.

The Defendant though duly served as evident in the affidavit of service sworn by MICHAEL MATIKA SILOYA dated the 30<sup>th</sup> September, 2019 failed to file any response to oppose the instant application. The instant application was canvassed by way of written submissions.

**Analysis and Determination**

Upon consideration of the Chamber Summons application dated the 23<sup>rd</sup> July, 2019 including the supporting affidavit as well as the written submissions, the only issue for determination is whether eviction orders should issue against the Defendant from half a portion of the suit land.

Before I make a determination of the said issue, I wish to provide a background of this matter. The Defendant in his Defence admitted that they bought the suit land jointly with the Plaintiff and the same is registered in their joint names. The Defendant contended that he had only built on his half portion of the suit land and spent almost Kshs. 500,000 to build a perimeter wall as well as level the said land. The Court proceeded to enter judgement on admission as against the Defendant on 15<sup>th</sup> day of February, 2018 in the following terms:

- 1. A declaration be and is hereby made that the Plaintiff is the co – owner of land parcel number NGONG/NGONG/ 29050***
- 2. The Defendant be and is hereby ordered to surrender all the necessary documents to the Plaintiff and or the Land Registrar Kajiado North, to enable them convert land parcel number NGONG/NGONG/29050 into a tenancy in common for purposes of subdivision in equal shares and for each party to obtain their respective title.***
- 3. Each party to equally contribute to the reasonable expenses of fencing the suit land.***
- 4. Plaintiff will have the costs of the suit.***

Despite the entry of the said Judgement, the Defendant never sought for review nor appealed against it. Further, a Decree was extracted after the entry of the said judgment. The Defendant has failed to file a replying affidavit to controvert the Plaintiff's averments. The Plaintiff in his submissions reiterates his claim and contends that all efforts to have the Defendant abide by the Orders of the Court are in vain. Further, he has proceeded to extract Warrants of Attachment of Moveable Property as well as Warrants of Attachment of execution of Decree for money but these have been disregarded by the Defendant.

Since this application is unopposed and noting that there already exists a judgement on admission as against the Defendant, I find it merited and will proceed to make the following final orders:

- a) An eviction order be and is hereby issued against the Defendant from half of land parcel number NGONG/ NGONG/ 29050 as shall be determined by a surveyor after subdivision of the said property into two equal portions as directed in the Judgement dated the 15<sup>th</sup> February, 2018.
- b) The costs of the surveyor undertaking the subdivision to be shared equally between the Plaintiff and the Defendant.
- c) The eviction be carried out by the OCPD Ongata Rongai Police Station and/ or an officer appointed by him/her.
- d) The Costs of the application is awarded to the Plaintiff.

**DATED SIGNED AND DELIVERED IN VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF APRIL, 2021.**

**CHRISTINE OCHIENG**

**JUDGE**