



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

ELC MISC. APPLICATION NO. E002 OF 2020

SAMIMPEX KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

HAWO BISHARO OMAR.....DEFENDANT/RESPONDENT

SALAT FENUS..... DEFENDANT/RESPONDENT

ISININO OSMAN..... DEFENDANT/RESPONDENT

FADUMO RAGE.....DEFENDANT/RESPONDENT

ADOW SEOW.....DEFENDANT/RESPONDENT

HAWO RAGE.....DEFENDANT/RESPONDENT

RULING

The application before me is dated 24th November, 2020 and filed by the Plaintiff/Applicant. It is brought under the Judicature Act Cap 8, the High Court (Practice and Procedure Rules (Part1 Rule 3) Orders 22 Rule (3), 50 rule 5 and 51 of the Civil Procedure Rules, 2010, Section 95 Civil Procedure Act and sections 152A, 152B, 152E, 152G an 152G of the Land Act, Regulation 65 of the Land Regulations 2017 and all other enabling Provisions of the Law. The application is seeking the following orders:-

1) Spent

2) **THAT** an extension of time to execute the eviction Order to issue to Recover Concept Auctioneers for the Execution Order dated 3rd February, 2015 granted by this court following an order made on the 2nd of May, 2014 by the Honourable Justice Mary Githumbi for the Defendants/Respondents namely, **HAWO BISHARO OMAR, SALAT FENUS, ISNINO OSMAN, FADUMO RAGE, ADOW SEDOW, HAWO RAGE** respectively to vacate and hand over all that land known as Title Number Garissa Town/Block 5/3 to the Plaintiff/Applicant.

3) **THAT** the costs of this Application be borne by the Defendants/Respondents.

The instant application is supported by the Supporting affidavit of Mohamed Munir Chaurhri dated 21st November, 2020.

The Applicant's case

Vide their supporting affidavit, the applicant avers that a judgment was entered in their favour by Justice Hon Mary M. Githumbi in Nairobi ELC No. 548 of 2013, and a decree was issued on 2nd May, 2014 declaring the applicant the rightful owner of the land known as Title Number Garissa Town/Block 5/3, a permanent Injunction restraining the defendants/Respondents from continuing their illegal trespass, a permanent Injunction compelling the Defendant/Respondents to vacate the suit land and for Defendant/Respondents to each pay damages for illegal trespass.

Additionally, they aver that an eviction order was consequently issued on the 2nd May, 2014, however the same was not executed due to financial constraints as the sought auctioneers, that is the Recovery Concept Auctioneers gave them a bill of Ksh. 1,500,000/= for executing the eviction. It is their case that they failed to raise the above sum within a year and therefore they would not effect the eviction.

Further, they aver that in compliance with the new Land Laws, they issued a notice to vacate the suit Land dated 13th January, 2020 and duly served the Defendants/Respondents, who however have refused and or ignored to comply with the notice and instead have continued to illegally trespass on his land in contempt of the court orders and decree.

It is their prayer that this court in the circumstances enlarges time within which they can execute the decree herein in the interest of justice to enable them execute the court orders herein.

The respondents/Defendants despite being served did not file response to the instant application and neither did their Counsel appear before the court despite being served with the instant application.

Determination

Upon consideration of the Notice of Motion herein including the supporting affidavit, the issue for determination is whether or not the Applicant is entitled to the orders sought in the Miscellaneous Application.

I note the genesis of this miscellaneous cause is from the Judgment of Justice Hon Mary M. Githumbi in Nairobi ELC No. 548 of 2013 dated 2nd May, 2014, where she entered Judgment in favour of the applicant herein, thus declaring the applicant the rightful owner of the land known as Title Number Garissa Town/Block 5/3, a permanent Injunction restraining the defendants/Respondents from continuing their illegal trespass, a permanent Injunction compelling the Defendant/Respondents to vacate the suit land and for Defendant/Respondents to each pay damages for illegal trespass. The Respondents despite being served did not appear and since there is nothing before the court indicating any appeal from the judgment herein, I hold that the terms of the judgment delivered on 2nd May, 2014 are still valid.

The applicant herein is basically seeking an enlargement of time to effect the eviction of the Respondents from the subject parcel of land situate within the territorial jurisdiction of this court, which had not been established in the year 2014 when the matter was determined. I note that the Applicant is merely seeking for an order from Court to issue eviction orders as directed by Justice Githumbi in the Judgment dated 2nd May, 2014 in ELC 548 of 2013.

Since the application is unopposed, I find the same merited and will proceed to allow it as prayed. I make no order as to costs.

READ AND SIGNED IN THE OPEN COURT AT GARISSA THIS 19TH APRIL, 2021.

HON. E. C. CHERONO

ELC JUDGE

In the presence of:

Mr. Sumba for the Applicant

Respondent/Advocate – absent

Faurdoswa – Court Assistant