



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 635 OF 2014

BEATRICE WAMUGO NDIRANGU.....1ST PLAINTIFF

DAVID WANGAI NDIRANGU.....2ND PLAINTIFF

VERSUS

ERASTUS MAINA NDIRANGU.....1ST DEFENDANT

MARY WANGARI.....2ND DEFENDANT

ANN WANGUI.....3RD DEFENDANT

MARGARET NJOKI.....4TH DEFENDANT

RULING

This suit was commenced by the Plaintiffs vide the plaint dated 22/05/2014 seeking a mandatory injunction directing the Defendants to vacate plot no. K. 12 Umoja 1 and plot no. C 2828 Dandora (the Suit Property), and in default an eviction order do issue. They also seek an order restraining the Defendants, their agents or servants from alienating, transferring, or disposing of the Suit Property, and an order directing the Defendants to account for rent received on the Suit Property from 1998 together with interest and costs of the suit. The Defendants did not file a response to the Plaintiffs' application dated 22/05/2014. The court determined the application dated 22/05/2014 on 15/5/2015, and ordered the Defendants to grant the Plaintiffs vacant possession of the Suit Property.

The Defendants filed the application dated 23/10/2015, seeking to set aside the orders made on 15/05/2015. The Defendants' application was dismissed on 28/04/2016.

This ruling is in respect of Plaintiffs' application dated 09/06/2016 and the Defendants' application dated 23/05/2018. The court will first determine the application dated 23/05/2018 seeking stay of the proceedings in this suit pending the hearing and determination of **Nairobi High Court Succession Cause 3116 of 2004- In the Matter of Augustino Ndirangu Mbutia (Deceased)**. The application was made on grounds that the Suit Property was the subject matter in Succession cause 3116 of 2004 which was pending before the Family Division of the High Court, hence continuance with this suit would amount to intermeddling with the assets of the estate of the deceased. The application was supported by the affidavit of Erastus Maina Ndirangu sworn on 23/05/2018. He deponed that the court issued an order in **Succession Cause 3116 of 2004- In the matter of Augustino Ndirangu Mbutia (Deceased)**, preserving the estate of the deceased under Section 45 of Law of Succession Act. He attached a copy of the order given on 10/03/2013 and averred that the 1st Plaintiff is deceased.

In response to the Defendants' application, Ian Wanda, counsel for the Plaintiffs swore the replying affidavit dated 20/03/2019 in which he deponed that on 18/10/2018 when this application came up for hearing, he brought to the attention of the court that **Succession Cause 3116 of 2004- In the matter of Augustino Ndirangu Mbutia (Deceased)** was dismissed for want of prosecution by Lady Justice L.A. Achode. He annexed a copy of the said order given on 02/10/2018.

The court has considered the application dated 23/05/2018, affidavits and annexures filed by the parties as well as facts and the law. The Defendants' application dated 23/05/2018 is spent because **Succession Cause 3116 of 2004- In the matter of Augustino Ndirangu Mbutia (Deceased)** was dismissed by the court.

The application dated 09/06/2018 was brought by the Plaintiffs seeking orders directing the Defendants to vacate the Suit Property in compliance with the court's Ruling given on 15/05/2015 ordering them to vacate the suit premises within 30 days from the date of service of the order, failing which eviction would be effected upon them by the Plaintiffs. The Plaintiffs also sought orders directed to the Officer Commanding Buru Buru Police Station to provide security and to oversee the eviction of the Defendants from the Suit Property in compliance with the court ruling issued on 15/05/2015. The application was supported by the affidavit of Beatrice Wamugo Ndirangu, now deceased, sworn on 09/06/2018 in which she deponed that despite the court having granted the Plaintiffs orders directing the Defendants to

vacate the suit premises, the Defendants have not vacated and continue to collect rent from the premises, to the detriment of the Plaintiffs. The Defendants filed grounds of opposition dated 18/07/2016 basically stating that continuance with this suit amounts to intermeddling with the assets of the estate of a deceased person. This court has already made a finding on this issue. Only the Plaintiffs filed submissions in respect of the application dated 09/06/2018.

The court has considered the application, grounds of objection and submissions filed.

The court notes that the Defendants did not file a defence in this matter. The court also notes that the Defendants have not complied with the ruling made on 15/05/2015. They continue to sit on the Suit Property despite there being an order directing them to vacate the premises. In the court's view, the Plaintiffs deserve vacant possession and there is no reason why the Defendants should continue to stay on the Suit Property.

The application dated 09/06/2016 is allowed with costs to the Plaintiffs.

Dated and delivered in open court at Nairobi this 8th day of July 2019.

K.BOR

JUDGE

In the presence of: -

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiffs and the Defendants