



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU
CASE No. 555 OF 2016
PETER WAMBUGU GATWEKU
PETER MUKORA NGARI
JANE NJERI (Suing as the administrators and
legal representatives of the estate of
the late MWANGI WAMBUGU.....PLAINTIFFS
VERSUS
JULIUS KINYANJUI.....DEFENDANT
RULING

(Application for injunction to restrain the defendant from interfering with the suit property and application to set aside interim injunctive orders granted ex parte; parties failed to comply with conditional orders on filing of submissions; both applications stood dismissed with costs owing to the failure)

1. By plaint filed on 15th December 2016, the plaintiffs commenced the proceedings herein seeking judgment against the defendant for an injunction restraining the defendant from interfering with the parcel of land known as RARE/TERET BLOCK 1/1907 and an eviction order in respect of the said property.

2. Alongside the plaint, the plaintiffs also filed Notice of Motion dated 15th December 2016. The application is brought under Order 40 rules 1, 2, 3 and 4 of the Civil Procedure Rules and seeks the following orders:

(a) Spent.

(b) Spent.

(c) That pending the hearing and determination of this suit, there be orders of injunction restraining the defendant/respondent by himself, his servants and or agents from entering, trespassing or in any way interfering with RARE/TERET BLOCK 1/1907.

(d) That costs be provided for.

3. The application is supported by the affidavit of the first plaintiff in which he deposes among others that he and the other plaintiffs are the administrators of the estate of Mwangi Wambugu (deceased). That the deceased is the registered proprietor of the suit property and that the deceased's efforts to settle on the suit property were frustrated by the defendant and that efforts to have the defendant to vacate the suit property failed.

4. The application was placed before Ombwayo J. who made the following orders on 28th December 2016:

1. That pending the hearing and determination of the application inter-partes, an order of injunction is hereby issued restraining the defendant by himself, his agents and or servants from entering, trespassing or in any other way interfering with LR RARE/TERET BLOCK 1/1907

2. That parties do comply with Order 11 of the Civil Procedure Rules.

3. THAT the matter be mentioned on 7th February 2017 at Nakuru ELC Court.

5. Being aggrieved by the orders of 28th December 2016, the defendant filed Notice of Motion dated 20th January 2017. The application was brought under Order 40 rule 7 of the Civil Procedure Rules, 2010 and seeks the following orders:

1. Spent.

2. Spent.

3. THAT the honourable court be pleased to discharge and/or set aside its Orders granted on 28th December 2016 as the said orders are detrimental to the interest of justice and those of the Defendant/Applicant herein.

4. THAT costs hereon be in the cause.

6. The application is supported by an affidavit sworn by Mr. Lawrence Macharia Karanja, Counsel for the defendant. He deposes that when the defendant was served with Notice of Motion dated 15th December 2016, it was indicated on the face of the application that inter parte hearing would be on 28th December 2016. That he attended court with the defendant on 28th December 2016 but the court was not sitting. That subsequently, the defendant was served with an order dated 28th December 2016, which order was given by Ombwayo J. sitting at Eldoret. That the defendant was not aware that the inter parte hearing would be at Eldoret.

7. When both applications came up for inter parte hearing on 12th April 2017, parties agreed to proceed by way of written submissions. Timelines were given for exchange of submissions and the matter was set for mention on 6th July 2017. Specifically, the plaintiff was to file and serve replying affidavit in respect of notice of motion dated 20th January 2017 within seven days from 12th April 2017 while the defendant was to file and serve supplementary affidavit, if any, within seven days of service of the replying affidavit. The plaintiff was to also file and serve written submissions in respect of both applications within fourteen days of service of the defendant's supplementary affidavit while the defendant was to file and serve written submissions in respect of both applications within fourteen days of service of plaintiff's submissions.

8. Owing to the judge's annual colloquium that was later scheduled to take place from 3rd to 8th July 2017, the mention of the matter was brought forward to 16th June 2017. At the mention, it transpired that parties had not complied with the order for filing and exchange of submissions. Consequently, the court made the following orders:

“Plaintiffs to file and serve written submission in respect of Notice of Motion dated 20th January 2017 and Notice of Motion dated 15th December 2016 within 14 (fourteen) days from today. In default, Notice of Motion dated 15th December 2016 to stand dismissed with costs.

The defendant to file and serve written submissions in respect of both applications within 28 (twenty eight) days from today. In default, the Notice of Motion dated 20th January 2017 to stand dismissed with costs. Mention on 29th September 2017 to take date of ruling.”

9. From the record, I note that the plaintiff’s submissions dated 22nd July 2017 were filed on 24th July 2017 while the defendant’s submissions dated 19th July 2017 were filed on 20th July 2017. When the matter came up on 29th September 2017, counsel for both parties told the court that they had filed their respective submissions. They thus urged the court to give date of ruling. None of the parties sought enlargement of time.

10. In view of the orders made on 16th June 2017, the plaintiffs were to file and serve submissions latest by 1st July 2017 failure to which Notice of Motion dated 15th December 2017 would stand dismissed with costs. Plaintiffs’ submissions not having been filed by 1st July 2017, Notice of Motion dated 15th December 2017 stood dismissed with costs on 2nd July 2017.

11. Similarly, the defendant was to file and serve submissions by 15th July 2017 but since 15th July 2017 was a Saturday, the defendant was to file and serve by 17th July 2017, failure to which Notice of Motion dated 20th January 2017 would stand dismissed with costs. Defendant’s submissions having not been filed by 17th July 2017, Notice of Motion dated 20th January 2017 stood dismissed with costs on 18th July 2017.

12. The orders of 16th June 2017 were very specific as to the timelines and consequences in case of default. The consequences were introduced after parties had failed to comply with earlier directions as regards filing and exchange of submissions.

13. In the present environment in which the court’s business is conducted, there is always pressure of work. Case backlog is a major challenge and has become a national concern. Under **sections 1A and 1B** of the **Civil Procedure Act** both the court and litigants including their legal representatives have a duty to play their respective parts to assist the court to achieve its overriding objective which is the just, expeditious, proportionate and affordable resolution of disputes. This obligation extends to promptly complying with the directions and orders of the court, bearing in mind that court orders are not made in vein.

14. In the circumstances, parties having failed to comply with the timelines, the default consequences materialized. Notice of Motion dated 15th December 2016 and Notice of Motion dated 20th January 2017 both stand dismissed with costs.

15. Parties are encouraged to urgently comply with Order 11 of the Civil Procedure Rules 2010 to facilitate and early hearing and determination of the suit.

Dated, signed and delivered in open court at Nakuru this 1st day of November 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Nancy Njoroge for the plaintiffs

Ms. Kinuthia holding brief for Ms. Gitau for the defendant

Court Assistants: Gichaba and Lotkomoi