



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 371 OF 2019**

ALTON HOMES LIMITED.....1<sup>ST</sup> PLAINTIFF

JOHN KANGOGO.....2<sup>ND</sup> PLAINTIFF

=VERSUS=

DAVIS NATHAN CHELOGOI.....1<sup>ST</sup> DEFENDANT

JOHN NDUATI NJUGUNA.....2<sup>ND</sup> DEFENDANT

SAMUEL KUGEKA NDEGWA.....3<sup>RD</sup> DEFENDANT

JOSHUA OMANDI HALLANDA.....4<sup>TH</sup> DEFENDANT

COMMERCIAL BANK OF AFRICA LTD.....5<sup>TH</sup> DEFENDANT

TRANSNATIONAL BANK LTD.....THIRD PARTY

**RULING**

1. This is the Notice of Motion dated 12<sup>th</sup> October 2020 brought under order 22 rule 29, order 51 rule 1 of the Civil Procedure Rules, section 1A, 1B, 3A, 38a and f, 51 and 63 (e), of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders:-

***1. Spent.***

***2. The officer commanding Kileleshwa Police Station do assist in restoration of Joshua Omandi Hallonda to property title number Nairobi/Block 26/113.***

***3. The cost of this application be borne by the plaintiffs.***

***4. Any other order deemed expedient in the circumstances be granted.***

3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.

4. The application is supported by the affidavit of Joshua Omandi Hallonda, the 4<sup>th</sup> defendant/applicant sworn on the 12<sup>th</sup> October 2020.

5. The application is opposed. There is a replying affidavit sworn by John Kangogo, managing director of the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> plaintiff/respondent herein sworn on the 7<sup>th</sup> December 2020. Counsel representing the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants stated that they were not opposing the application.

6. There is also the Notice of Motion dated 7<sup>th</sup> December 2020 brought under section 28 of the Land Registration Act No 3 of 2012, Section 1A, 1B, 3, 3A 63 (c) and (e) of the Civil Procedure Act, Cap 21 of the Laws of Kenya, Order 40, Rule 1 of the Civil Procedure Rules 2010.

7. It seeks orders:-

**1. Spent.**

**2. This application be heard together with the 4<sup>th</sup> defendant's Notice of Motion dated 12<sup>th</sup> October, 2020.**

**3. The 4<sup>th</sup> and 5<sup>th</sup> defendants and the third party by themselves or by their agents, servants or otherwise howsoever be restrained from entering upon property Nairobi Block 26/113, levying distress upon, attaching the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff's furniture and chattels, evicting the 1<sup>st</sup> plaintiff from and/or in manner whatsoever interfering with the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' occupation of property Nairobi Block 26/113, pending the hearing and determination of this suit de novo.**

**4. The 4<sup>th</sup> and 5<sup>th</sup> defendants and the Third Party by themselves or by their agents, servants or otherwise howsoever be restrained from advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning and/or otherwise dealing with the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' furniture and chattels distressed from the premises on property Nairobi Block 26/113 pending the hearing and determination of this suit de novo.**

**5. Directions for the hearing of the suit de novo be given and the suit be fixed for hearing on a priority basis.**

**6. The costs of this Application be provided for.**

8. The grounds are on the face of the application and are set out in paragraphs 1 to 8.

9. The application is supported by the affidavit of John Kangogo the Managing Director of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs/applicants sworn on the 7<sup>th</sup> December 2020.

10. The application is opposed. There is a replying affidavit sworn by Joshua Omondi Hallonda the 4<sup>th</sup> defendant/respondent sworn on the 9<sup>th</sup> December 2020. There is also a replying affidavit sworn by Jackson Nyaga, legal counsel for the 5<sup>th</sup> defendant sworn on the 14<sup>th</sup> December 2020.

11. The two applications were canvassed by oral submissions on 28<sup>th</sup> January 2021.

12. I have gone through the court record on the 25<sup>th</sup> October 2019, the Honourable LJ L. Gacheru granted the following orders:-

***"1. That leave be and is hereby granted to the proposed interested parties to be enjoined in this suit.***

***2. That the 1<sup>st</sup> proposed interested party's occupation prior to the eviction carried out on the number Nairobi/Block 26/113 on the 1<sup>st</sup> March 2019 be restored pending the hearing and determination of this application.***

***3. That there be stay of execution of the judgments entered on the 23<sup>rd</sup> February 2018 and subsequent decree pending the hearing and determination of this application.***

***4. That costs of this application to be met by the second defendant.***

***5. That the 2<sup>nd</sup> defendant/respondent to meet the costs incurred by the plaintiff/respondents herein in the enforcement or execution of the reviewed judgment as he omitted to avail crucial evidence in court.***

***6. That the 1<sup>st</sup> interested party's occupation prior to the eviction from the suit property, be restored pending the de novo hearing and determination of the main suit herein."***

13. The plaintiffs being dissatisfied with the said orders preferred an appeal. The Court of Appeal in its Judgment dated 9<sup>th</sup> October 2020 dismissed the Appeal. In essence order no 6, is still in force. It reads:-

***"That the interested party's occupation prior to the eviction from the suit property, be restored pending the de novo hearing and determination of the main suit".***

14. The "Interested Party" is the 4<sup>th</sup> defendant/applicant herein. The said order has not be set aside. I therefore find merit in this application and the same is allowed.

15. Accordingly, I find the notice of motion dated 7<sup>th</sup> December 2020 to be devoid of merit. It is an abuse of the court process and the same is dismissed with costs to the 4<sup>th</sup> defendant/respondent.

16. The notice of motion dated 12<sup>th</sup> October 2020 is therefore allowed in the following terms: -

*(a) That the OCS Kileleshwa Police Station do assist in restoration of Joshua Omondi Hollanda to property title Number Nairobi/Block 26/113.*

*(b) That the costs of this application be borne by the Plaintiffs.*

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 10TH DAY OF JUNE 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms E Angawa for N. Havi for the Plaintiffs

Mr. Ombwayo for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Mr. Odhiambo for the 4<sup>th</sup> Defendant

Ms Fiona Maina for the 5<sup>th</sup> Defendant

Mr. Ngaiywa for Kibet for the Third Party

Phyllis - Court Assistant