



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO 31 OF 2018

LUPE CONTRACTOR CO. LIMITED..... APPELLANT

=VERSUS=

WILLIAM KARIUKI..... RESPONDENT

RULING

1. Before court for determination in this appeal is the respondent's notice of motion dated 20/1/2021 (**the application**), through which the respondent sought the following orders:

- 1) That this application be certified urgent and be heard exparte in the first instance.**
- 2) That this appeal be dismissed having been overtaken by events.**
- 3) That the appellant be compelled by mandatory injunction to surrender/hand over vacant possession of the leased property on Thika Municipality Plot Number block 11/1027 located on School Road, Thika.**
- 4) That the Officer Commanding Thika Police Station doe ensure compliance of Clause 3 above by providing security.**
- 5) That costs of this application and suit be awarded to the applicant.**

2. When the application came up for interpartes hearing on 18/10/2021, Mr Nderitu, counsel for the respondent, orally applied to abandon prayers 3 and 4 of the application, on the ground that the appellant had vacated the suit premises and therefore the reliefs sought in the two prayers were no longer necessary. The request was granted. What therefore remains for substantive consideration by the court is the plea for dismissal of this appeal on the ground that the appeal has been overtaken by events (prayer 2).

3. The appellant did not file a response to the application. Similarly, they did not attend court to oppose the application. An affidavit of service sworn by Benson Muturi Wangari on 8/2/2021 and filed in court on 18/2/2021 indicates that, the application together with a hearing notice, were served on the appellant on 5/2/2018. Another affidavit of service sworn by the same deponent on 1/10/2021 and filed in court on 4/10/2021 indicates that, a hearing notice relating to the hearing of 18/10/2021 was served on 22/9/2021. The court is therefore satisfied that the application and the appropriate hearing notices were served.

4. The respondent filed written submissions dated 9/8/2021 in support of the application. Further, the respondent, through counsel, made brief oral submissions in the virtual court on 18/10/2021. Counsel submitted that the term of the tenancy contract dated 21/10/2014 which gave rise to the appeal herein lapsed on 30/11/2020 by the effhixion of time, hence the appeal herein had been overtaken by events. Counsel added that upon lapse of the term of the lease, the appellant vacated the suit premises. Counsel urged the court to grant prayers 2 and 5 of the

application.

5. I have considered the application. In the absence of any response and/or submissions or any other form of opposition to the application, the court does dismiss this appeal in terms of prayer 2 of the notice of motion dated 20/1/2021. The appellant shall bear costs of the appeal. For the avoidance of doubt, the court makes the following disposal orders:

- a) The appeal herein is dismissed.**
- b) The appellant shall bear costs of the appeal.**

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF OCTOBER 2021

B M EBOSO

JUDGE

In the presence of: -

Mr Nderitu for the Respondent

Court Assistant: Lucy Muthoni

B M EBOSO

JUDGE