



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**ELC MISC APPLICATION NO. 37 OF 2021**

**GRACE WANGARI MUREITHI.....APPLICANT**

**VERSUS**

**DAVID NJOROGE.....RESPONDENT**

**R U L I N G**

**INTRODUCTION**

1. This is a ruling in respect of a Notice of Motion application dated 19<sup>th</sup> of July 2021. The said application is brought under Certificate of Urgency and pursuant to section 1A and 3A of the civil procedure Act, Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 152F of the Land Act 2012 and all other enabling provisions of the law.

2. The Applicant seeks the following orders:-

***a) Spent***

***b) THAT this Honourable Court be pleased to issue an eviction order and the Respondent be ordered to give vacant possession of plot 16 C BLOCK GILGIL TOWNSHIP.***

***c) THAT cost of this application be provided for.***

3. The application is premised on the following grounds:

***a) The Applicant is the Administrator and a beneficiary of the Estate of Peter Mureithi Mungai (Deceased).***

***b) The Applicant and Moses Wairiuko are the beneficiaries of the suit land pursuant to a Certificate of Confirmation of Grant dated 19<sup>th</sup> August, 2019.***

***c) That the Respondent herein invaded the suit land consequently interfering with the estate of the deceased and denying the beneficiaries of the deceased access and use of the afore mentioned parcel of land.***

***d) The Respondent has invaded the Applicants plot with the object of alienating it and defeating her rights to the aid property.***

***e) The Respondent was served with Notice of Eviction but has neglected and/ or ignored the same necessitating the Applicant to file this suit.***

***f) That the Applicant is apprehensive that the property is in danger of alienated (sic) unless this Honourable Court intervenes and the orders sought herein granted.***

4. The application is further supported by the affidavit of Grace Wangari Mureithi: the applicant herein.

5. The Respondent did not file any response to the application.

## **FACTUAL BACKGROUND**

6. The application came up for hearing ex-parte and the on the 28<sup>th</sup> July, 2021 and the Duty Judge ordered that the application be served on the Respondent. In the meantime, the application was fixed for inter partes hearing on 22<sup>nd</sup> September, 2021.
7. On the 22<sup>nd</sup> September, 2021 when the application came up for inter-partes hearing, one Miss Mureithi Advocate appeared and introduced herself as appearing for the Respondent. She informed the court that she was served late on 17<sup>th</sup> September, 2021 and needed more time to file her response to the application. Counsel was granted more time and the hearing of the application was adjourned to 6<sup>th</sup> October, 2021. It is important to note that on the said 22<sup>nd</sup> September, 2021, Counsel for the Applicant was absent and Miss. Mureithi who appeared for the Respondent undertook to serve the Applicant with the hearing date.
8. On the 6<sup>th</sup> October, 2021, the Respondent and/ or his counsel was absent. Counsel for the Applicant informed the court that he had not been served with any response to his application. The matter was adjourned to 21<sup>st</sup> October, 2021 to give time to the Applicant to file her submissions.
9. On 21<sup>st</sup> October, 2021 the Applicant confirmed the fact of filing submissions and also confirmed that he had served the Respondent with the mention notice; the affidavit of service dated 26<sup>th</sup> October, 2021 is on record. The application was then reserved for ruling.
10. The importance of this background is to demonstrate that the Respondent was properly served with the application, participated in the proceedings – through counsel- on one occasion but did not file any response.

## **ISSUES FOR DETERMINATION.**

11. The Applicant in her submissions has identified and listed the issues for determination as follows:

*(a) Whether the application is merited.*

*(b) Costs.*

12. In my view, these are indeed the twin issues for determination. More particularly, whether the orders sought are in law capable of being granted.

## **THE APPLICANT'S CASE.**

13. The Applicant's case is set out on the grounds on the face of the application and also in the supporting affidavit of Grace Wangari Mureithi. The Applicant deposes that she is the administrator of the estate of one Peter Mureithi Muigai. She has attached a copy of the grant of letters of administration and the confirmed grant.
14. She deposes further that the suit land was allotted to the deceased and one Moses Waruiko and that both persons were in occupation of the suit land until sometime in 2019 when the Respondent invaded the land and started developing it. A copy of the allotment letter is annexed to the affidavit in support
15. The Applicant deposes that on 5<sup>th</sup> November, 2019 the Respondent was served with a Notice of Eviction dated 30<sup>th</sup> October, 2019 but has never vacated the suit land. A copy of the notice of eviction and affidavit of service are also annexed.
16. The Applicant also deposes that she is unable to utilise the suit land because the Respondent has refused to vacate, adding that the Respondent has no claim whatsoever and that if the Respondent is not ordered to vacate, she stands to suffer irreparable loss as she cannot use the suit land.
17. The Applicant prays that the court orders the Respondent to give vacant possession of the suit land as he is a trespasser.

## **ANALYSIS AND DETERMINATION**

18. The Applicant's submissions reiterate the grounds of the face of the application and the matters deposed in affidavit in support of the application.
19. I have read the application which is expressed to be brought under Section 152E of the Land Act, affidavit in support of the application and their accompanying annexures together with the Applicant's submissions.
20. I also take note that the Applicant has demonstrated ownership of the suit land.
21. Section 152E of the Land Act provides as follows:

**“152E. Eviction Notice to Unlawful Occupiers of Private Land**

**(1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.**

**(2) The notice under Subsection (1) shall**

**a) Be in writing and in a national and official language;**

**b) In the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;**

**c) Specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and**

**d) Be served on the Deputy County Commissioner in charge of the area as well as the Officer Commanding the Police Division.**

22. An analysis of section 152E shows that the first step in an eviction is for the lawful owner to serve a notice of eviction. The notice of eviction must be not less than three months. The notice in the present case was served on 5<sup>th</sup> November, 2019. It is almost two years since this notice was served and the Respondent has failed, refused or neglected to vacate the suit land.

23. The importance of this notice period is set out in Section 152F

**152F. Application to Court for relief.**

**(1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.**

**(2) The Court, after considering the matters set out in sections 152C, 152D and 152E may-**

**(a) Confirm the notice and order the person to vacate;**

**(b) Cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;**

**(c) Suspend the operation of the notice for any period which the court**

**Shall determine; or**

**(d) Order for compensation.**

24. Its purpose is to give the person an opportunity to apply to court for relief against the notice. *It has been nearly two years and the Respondent has neither vacated nor moved the court for any relief against the eviction.*

25. *I have interrogated the affidavit of service sworn by one Ronald M. Njuguna and I am satisfied that the Respondent was properly served. I am also satisfied that the Deputy County Commissioner Gilgil and Officer Commanding Police Division (O.C.P.D) Gilgil were properly served as is evidenced by their stamps and signatures on the notice.*

26. A reading of the provisions of Section 152E would imply that an application such as this is heard ex parte. *The Respondent, however, had another opportunity to seek relief against the eviction notice by filing his response to this application and he squandered that opportunity too; quite clearly to his detriment. He was served with the application, his counsel appeared in court and sought more time to put in a response but didn't. He was also served with a mention notice for submissions and failed to come to court.*

27. *For the reasons set out in the foregoing paragraphs, I have no reason to decline this application. Consequently, I allow it and make the following orders:*

**a) The Respondent be evicted from and give vacant possession of the land parcel Plot 16 C BLOCK GILGIL Township.**

**b) The Applicant shall have the costs of this application.**

28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 29<sup>TH</sup> DAY OF NOVEMBER 2021.**

**L. A. OMOLLO**

**JUDGE**

**In the presence of: -**

**No appearance for the parties.**

**Ruling delivered in their absence.**

**Court Assistant; Monica**