

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISCELLANEOUS APPLICATION NO. E003 OF 2020

ROSE NYAWIRA WANGOMBE.....PLAINTIFF/APPLICANT

VERSUS

MERCY WARIO NDEGE.....DEFENDANT/RESPONDENT

RULING

1. Before this court is an application dated 14.09.2020 and filed in court on 15.09.2020 under certificate of urgency and wherein the applicant prayed that the defendant be forcefully evicted from Plot No. D72 Kagio market, that the eviction be executed by Mwangi Auctioneers, that the OCS Kagio Police Station do provide security to M/s Mwangi Auctioneers while executing the orders and further that she be committed to civil jail for a period not exceeding six (6) months for disobeying the orders of the Honourable Judge Ong'udi dated 22.06.2012. The applicant further prayed for the costs of the application.
2. The application is premised on the grounds on its face and further supported by the affidavit sworn by the applicant. The applicant's case is that she is the registered allottee of Plot D72 Kagio (suit property) and that the defendant was evicted but in the absence of the applicant who resides in Mombasa, the defendant went back and forcefully occupied the premises once more despite the orders directing her not to do so. That the plaintiff has visited Kagio police station but the OCS has been hesitant to enforce the orders as it is long since they were issued.
3. The application is opposed vide a replying affidavit and a further affidavit (filed with leave of this court) both sworn by the respondent. The respondent's case in a nutshell is that Civil Suit No. 51 of 2011 was ordered to be transferred to the lower court on 1.08.2012 and was allocated file No. 5 of 2013 but which suit was dismissed vide the orders of 6.11.2017 for want of prosecution. As such, any interlocutory order issued were extinguished upon dismissal of the suit and thus the present application ought to be dismissed as the same is unmerited. She annexed a copy of the order transferring the suit to the lower court and the order of dismissal of the suit to the further affidavit.
4. The application was canvassed by way of written submissions. On behalf of the applicant, it was submitted that the applicant has been unable to utilize the suit property as the defendant has continuously harassed her and threatened to cause bodily harm to her if she steps on the suit land and which actions have hindered the plaintiff from enjoying quiet possession of her property as guaranteed under Article 40 of the Constitution. Further that, this court has the powers to punish for contempt of court as provided for under section 5 of the Judicature Act and further, not to condone disobedience of its orders. Reliance was made on the case of **Samuel M. N. Mweru & others -vs- National Land Commission & 2 others (2020) eKLR** on the powers to punish for contempt of court orders.
5. The respondent in her submissions reiterated her depositions in her replying affidavit and further affidavit and essentially submitted that despite the applicant having gotten eviction orders, the respondent was able to obtain temporary orders of stay of execution of the said eviction orders. Further that the suit was thereafter dismissed for want of prosecution on 6.11.2017 and before which the suit had been transferred to the lower court and given a new number being CMCC No. 5 of 2013. That as a result of the dismissal orders, the eviction orders were extinguished and thus the applicant can't purport to enforce non-existent orders or seek committal to civil jail of the defendant for contempt of orders that had been stayed by the court and which were eventually extinguished upon dismissal of the suit.
6. I have considered the application herein, the response in opposition to the same and further the rival submissions filed herein. It is my view that the issues for determination are whether the respondent herein ought to be evicted from the suit land and further be committed to civil jail for contempt of the orders of Hon. Ong'udi J made on 22.06.2012.
7. At the preliminary, I note that the dispute herein involves ownership of the suit land. The suit was initially filed on 6.05.2011 and at the time when this court had jurisdiction to determine disputes in relation to ownership of land. However, with the enactment of the Environment and Land Court Act of 2012, the jurisdiction to determine disputes in relation to ownership and title to land was bestowed on the Environment and Land Court. It is my considered view as such that issues arising out of the instant application are no longer within the jurisdiction of this Honourable Court. Despite the issue as to jurisdiction having not been raised by any of the parties, it is trite that the issue (jurisdictional issue) is a fundamental issue and the court can determine the same *suo moto*. See the decision of the Supreme Court in the case of **Nasra Ibrahim Ibren -vs- Independent Electoral and Boundaries Commission & 2 others**, Supreme Court Petition No. 19 of 2018-paragraph 40).
8. This is for the reason that where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing as jurisdiction must be acquired before a case can be heard. (See the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] eKLR**).
9. As such, the application is hereby struck out for want of jurisdiction.
10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF OCTOBER, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent