



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAKAMEGA
ELC CASE NO. 343 OF 2017

FRED MARTIN SIMBILI.....PLAINTIFF/APPLICANT

VERSUS

ESTERA MMBONE LUSASI.....1ST DEFENDANT/RESPONDENT

EUNICE MORAA.....2ND DEFENDANT/RESPONDENT

RULING

This application is dated 30th January 2018 and is brought under Section 3, 3A of the Civil Procedure Act and all others enabling Provisions of the Laws of Kenya seeking the following orders;

1. This application to be certified as extremely urgent and be heard ex-parte in the first instance as service is dispensed with.
2. That there be an order of allocation of the nearest date for the hearing of the main suit on a priority basis for its determination upon merits after full hearing.
3. That the plaintiff/applicant be allowed unlimited access and/or right of way to the said parcel of land pending hearing and determination of this suit.
4. Costs of the application be in the cause.

The applicant submitted that orders were granted in this matter by the honourable court on 25th January, 2018. (Annexed and marked 'RL1' is a copy of the said ruling. That among granted were, that the 2nd defendant/respondent be enjoined in this suit and order of the court issued herein on 14th of November, 2017 and all other consequential orders thereto be set aside and that the costs of the application be in the cause. That the 2nd defendant/respondent went ahead and extracted the said orders (Annexed and marked 'RL2' is a copy of the said orders). That on 29th January, 2018 at 7.00 p.m., the 2nd defendant/respondent went ahead and violently evicted the plaintiff's/applicant's servant/worker by the name Rotan Lidahuli Kigudwa. That the 2nd defendant went ahead and occupied the plaintiff's/applicant's furnished house on the suit land and is there to date. That the plaintiff /applicant knows out of his own knowledge and belief that there was no specific order from the ruling to that effect to warrant the 2nd defendant's/respondent's above stated actions. That the 2nd defendant's/respondent's above stated actions are not only illegal, contemptuous, in bad taste but also likely to provoke violence and exacerbate a breach of peace on the part of the plaintiff/applicant and her. That the plaintiff/applicant knows out of his knowledge and belief that

the honourable court has ordered that the 2nd defendant/respondent be enjoined in this suit and have the suit determined afresh and upon merits after a full hearing. That the plaintiff/applicant has no objection to the orders and directions issued by the honourable court from the above stated ruling save for prioritization of the hearing of the above stated suit owing to the new developments accrued from the 2nd defendant's/respondent's above stated actions. That the honourable court should grant me orders for allocation of the nearest hearing dates of the main suit on priority basis for determination of issues upon merits after full hearing.

The respondent submitted that, it is true she filed an application dated 7th December, 2017 through her advocates on record under certificate of urgency inter alia seeking for orders that the consent order issued on 14th November, 2017 be set aside, that she be enjoined as an interested party and that together with her family members be forthwith allowed back on the suit parcel. That subsequently upon interparties hearing and in the ruling delivered by the honourable court, the court issued orders in the following terms. Annexed hereto and marked 'EML-1 (a) and (b) is a copy of the ruling and order thereto.

(a) *"That an order be issued enjoining the applicant as an interested party to this suit".*

(b) *"The order of the court issued on 14th of November, 2017 and all other consequential orders thereto be set aside".*

(c) *"The costs of the application be in the cause."*

That the above orders and specifically the second order above stated, it meant that the eviction orders and orders of demolition issued on 14th November, 2017 by the Deputy Registrar were henceforth declared non existence and hence together with her family members they were at liberty to go back to their land pending the hearing and final determination of the main suit. That pursuant to the consent order issued on 14th November, 2017 by the Deputy Registrar in her absence, left her destitute without a home and they had only sought and been allowed by the area chief a temporary stay at his offices until the ruling of this honourable court issued on 25th January 2018 which set aside those earlier orders. That her family members only went back to the suit parcel of land after the court had set aside the eviction orders as they have nowhere else to go since the chief had also informed them to leave his premises.

This court has carefully considered both the applicant's and the respondents' submissions and annexures therein. The application is based on the grounds that, there was an application in this matter dated 7th December, 2017 which was brought by the 2nd defendant/respondent under sections 3, 3A and 80 of the Civil Procedure Act, Order 1 rule 10 and order 45 rule 1 of the Civil Procedure rules. That a ruling on the same was delivered by the court on 25th January, 2018. That upon ruling, the 2nd defendant/respondent went ahead and violently evicted the plaintiff's/applicant's servant/worker from his own house built on the suit land on 29th January, 2018 at 7.00 p.m. That the 2nd defendant/respondent has gone ahead to occupy the plaintiff's/applicant house after evicting his servant/worker. That there was no specific order issued to that effect from the ruling to warrant the 2nd defendant's/respondent's actions. The actions of the 2nd defendant/respondent are likely to provoke violence and exacerbate a breach of peace on the part of both the plaintiff/applicant and the 2nd defendant/respondent which would undermine the dignity of the processes of the honourable court and dent the image and reputation of the judiciary. I have perused the court file and find that the respondent filed an application dated 7th December, 2017 through her advocates on record under certificate of urgency inter alia seeking for orders that the consent order issued on 14th November, 2017 be set aside, that she be enjoined as an interested party and that together with her family members be forthwith allowed back on the suit parcel. That subsequently upon interparties hearing and in the ruling delivered by the court, the court issued orders in the following terms;

1. *"That an order be issued enjoining the applicant as an interested party to this suit".*

2. *"The order of the court issued on 14th of November, 2017 and all other consequential orders*

thereto be set aside”.

3. *“The costs of the application be in the cause.”*

That the above orders meant that the eviction orders and orders of demolition issued on 14th November, 2017 by the Deputy Registrar were henceforth set aside. I find this application has no merit and I dismiss it with costs. The applicant is advised to get a hearing date of the main suit in the registry.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 15TH DAY OF MAY 2018.

N.A. MATHEKA

JUDGE