



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**(MILIMANI LAW COURTS)**

**CIVIL SUIT NO. 284 OF 2012**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES...PLAINTIFF/RESPONDENT**

**VERSUS**

**JANET NYANDIKO.....DEFENDANT/APPLICANT**

**RULING**

1. Janet Nyandiko, the Defendant/Applicant, took out the Notice of Motion dated 18<sup>th</sup> November, 2014, in which she sought for the following orders inter alia:

i. **THAT** this Application be certified as urgent and the same be heard ex-parte in the first instance.

ii. **THAT** pending the hearing and determination of this application this Honourable Court be pleased to issue an Order directing the Respondent to open all doors and gates to the suit property and allow the Applicant quiet possession of the house property known L.R. No. 140/193 situated at Nyayo Estate, Embakasi.

iii. **THAT** the Respondent, its servants, agents and/or persons acting under its instruction or otherwise be and are hereby ordered to stop interfering, taking possession, charging, encumbering, dealing with parcel of land known as L.R. No. 140/193 situated at Nyayo Estate, Embakasi in derogation of the proprietary rights of the Applicant pending the hearing and determination of this suit.

iv. **THAT** costs of this Application be provided for.

2. The motion is supported by the affidavit of Janet Nyandiko sworn on 18<sup>th</sup> November, 2014 in which she averred that she had been remitting monthly payments. That on 10<sup>th</sup> November, 2014, personnel from the Plaintiff hereinafter referred to as, "NSSF" entered her premises and removed her household and personal belongings, changed the locks of the main door, removed motor vehicle registration number KAR 240M from the parking bay, left it parked outside and locked the access gate with a chain and a big padlock. The Defendant averred that she was never served with a repossession notice as the mailing address indicated on the notice is not the one she provided under the Tenant Purchase Agreement. She further averred that her requests to settle the outstanding arrears were rejected and as a result she has suffered shame and embarrassment with the right thinking members of the society.

3. The Board of the National Social Security Fund, the Plaintiff/Respondent filed the replying affidavit of Austin Ouko, its then General Corporate Manager and Ag. Company Secretary to oppose the motion. He averred that the Defendant was in breach of the Tenant Purchase Agreement as she had failed to comply with the court order issued on 20<sup>th</sup> December, 2012 wherein she was required to settle all outstanding arrears within 30 days. He averred that the Defendant last made payment on 6<sup>th</sup> June, 2013 and consequently defaulted in making her subsequent payments. The Plaintiff stated that when the Defendant breached the Tenant Purchase Agreement, it issued a repossession notice which was not responded to and hence NSSF proceeded to take possession of the suit premises on 10<sup>th</sup> November, 2014 as the loan balance and arrears stood at Kshs. 3,443,779.39. It is averred that the eviction was carried out lawfully.

4. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. On or about 25<sup>th</sup> June, 2008, the Plaintiff and the Defendant entered into a Tenant Purchase Agreement for the purchase by the Defendant from the Plaintiff of a leasehold unit known as L.R. 140/193 for Kshs. 4,500,000. The Defendant was to make an initial deposit of Kshs. 450,000 before or upon the execution of the Tenant Purchase Agreement and the balance of Kshs. 4,050,000 together with interest on the amount of such balance for the time being remaining unpaid at the rate of 15 per cent per annum. The Defendant averred that the Plaintiff was interfering with her right to quiet possession of L.R. No. 140/193 situated at Nyayo Estate, Embakasi and beseeched this court to grant her an order of mandatory injunction.

5. Whilst awaiting for the inter-parties hearing of the application, this court directed the Plaintiff to submit a status report on the suit premises. It has now emerged from the report filed by the Plaintiff in compliance with court directions vide the letter dated 19<sup>th</sup> December, 2017 that the suit premises has been sold to a third party who is not a party to this suit.

6. The Defendant has applied to this court to direct the Plaintiff/Respondent to grant the Defendant access to the suit premises and to prohibit the Plaintiff/Respondent from interfering with the enjoyment of quiet possession in derogation of the proprietary rights of the Defendant pending the hearing and determination of this suit. It is apparent that in light of the status report that a third party has taken possession of the suit premises therefore the application has been overtaken by events.

7. The orders sought cannot be granted before hearing the third party who purchased and taken up possession of the suit property. Consequently the motion dated 18<sup>th</sup> November, 2014 having been overtaken by events is hereby ordered struck out.

8. Costs of the motion to await the outcome of this suit.

**Dated, Signed and Delivered in open court this 13<sup>th</sup> day of July, 2018.**

**J.K. SERGON**

**JUDGE**

In the presence of:

..... For the Plaintiff

..... For the Defendant