



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 557 OF 2017 (OS)

NATIONAL HOUSING CORPORATION.....PLAINTIFF

=VERSUS=

JOHNSTONE JACOB MUNYASA.....DEFENDANT

JUDGMENT

1. On 29/8/2017, the plaintiff, National Housing Corporation, took out an original summons dated 25/8/2017 under Order 37 Rule 3; Sections 24 and 26 of the Land Act; and Section 21(2) of the Auctioneers Act. They sought the following verbatim orders;

1) That the plaintiff/applicant is the registered proprietor of MADARAKA ESTATE FLAT NUMBER MF 45 L erected and being on all that piece or parcel of land known as Property Land Reference Number 25980, Nairobi together with the developments and improvements thereon (“the suit property”).

2) That the plaintiff/ applicant is entitled to vacant possession of the suit property.

3) That the defendant/ respondent by himself or his servants and/ or agents or any other occupants do forthwith deliver vacant possession of the suit property to the plaintiff/ applicant and/or the appointed agent.

4) That the defendant/respondent by himself, or his agents or any other occupants be forcefully evicted from the subject premises should they fail to deliver vacant possession within fourteen (14) days from the date of the order of this honourable court.

5) The defendant/ respondent bears the costs of this application.

2. The plaintiff subsequently filed an affidavit of service on 12/10/2017 indicating that personal service of summons and the originating summons had been effected on the defendant’s son, Ronald Waundo Munyasa. Not satisfied with the mode of service, the court directed the plaintiff to serve summons and the originating summons through a notice in either the Daily Nation or the Standard Newspapers. Subsequently, on 10/12/2018, the plaintiff filed an affidavit of service indicating that the defendant had been served through a notice in the Daily Nation issue of 26/11/2018. The defendant neither entered appearance nor filed a response to the originating summons. Consequently, hearing of the originating summons proceeded *ex-parte* through affidavit evidence and written submissions.

3. The originating summons was supported by an affidavit sworn on 25/8/2017 by K K Manala. The case of the plaintiff is that it is the proprietor of the suit property, Madaraka Estate, Flat Number MF 45L (the suit property). In December 2009, it offered to sell the suit property to the defendant and the defendant accepted to purchase it at Kshs 2,100,000. Terms of the sale were set out in the letter of offer dated 4/12/2009. The defendant subsequently failed to honour the terms of the sale. Consequently, the plaintiff rescinded the offer through a notice dated 2/12/2012. Subsequently, it issued a notice of termination of tenancy and invited the defendant to deliver vacant possession of the suit property to facilitate processing of refund of the deposit paid by the defendant. Despite formal notice to give vacant possession, the defendant has remained in possession of the Flat.

4. I have considered the originating summons. Firstly, the originating summons is unopposed. Secondly, the plaintiff has demonstrated that there was a duly accepted offer which the defendant has failed to honour. It has also demonstrated that appropriate notices, including notice to vacate the suit property, were duly served on the defendant.

5. In the circumstances, the court is satisfied that in the absence of any opposition or controverting evidence, the prayers sought by the plaintiff should be granted.

6. I accordingly issue the following orders:

a) That the plaintiff is the registered proprietor of MADARAKA ESTATE FLAT NUMBER MF 45 L erected and being on all

that piece or parcel of land known as Land Reference Number 25980, Nairobi, together with the developments and improvements thereon (“the suit property”).

b) That the plaintiff is entitled to vacant possession of the suit property.

c) That the defendant by himself or his servants and/ or agents or any other occupants do forthwith deliver vacant possession of the suit property to the plaintiff and/or the appointed agent of the plaintiff.

d) That the defendant by himself, or his agents or any other occupants be forcefully evicted from the subject premises should he fail to deliver vacant possession within thirty (30) days from the date of service of this decree/order.

e) The defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF MAY 2020.

B M EBOSO

JUDGE

In the presence of:-

Mr Mbogo for the Plaintiff

Court Clerk - June Nafula