



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 79 OF 2013

RONALD WERE MWACHI.....PLAINTIFF/ RESPONDENT

VERSUS

JANE OMUKAMBA

JOSEPH MOYI

MACLEOD ARINGO ANYANZWA

RODAH ANYAZWA

EDWARD LIBOI

JOHN ANYANGU MOYI.....DEFENDANT/APPLICANT

RULING

The application is dated 20th September 2019 and is brought under Section 1A, 1B, 3, 3A of the Civil Procedure Act and order 22 Rule 6 and Order 51 of the Civil Procedure Rules seeking the following orders;

1. That this application be certified urgent.
2. That the following trespassers herein who are in occupation of the suit property herein be evicted.
 - (i) Dr. Francis Mbasira.
 - (ii) Teresa Awuor.
 - (iii) Hellen Indimuli.
 - (iv) Mariciana Cheti.
 - (v) Humphrey Ndemga.
 - (vi) Fred
 - (vii) Ambrose Oduor.
 - (viii) Mary Orapidi.
 - (ix) Linus M.S. Lubembe.
3. That Kennedy K. Shikuku t/a Eshikoni Auctioneers do carry out the eviction.
4. That the OCS Kakamega Police Station do supervise the eviction.

5. That the costs of this application be provided for.

It is grounded on the annexed affidavit sworn by John Anyango Moyi and is based on the following and grounds that it is in the interest of justice that the application be allowed. That the trespassers are strangers to the applicant. That the trespassers are illegally occupying the suit land and without authority of the applicant herein. That natural justice demands that the trespassers be evicted.

The respondent herein Ronald Were Mwachi raised the following grounds of opposition to the said application that the order of eviction was never sought by the applicant in the main suit and consequently was never issued by the court in its judgment and the applicant cannot purport to obtain the same through a mere application. That the persons listed in prayer (2) of the application whom the applicant seeks to obtain eviction orders against were not party to the main suit, were never accorded an opportunity to be heard and are not even listed as parties to this application hence shall be condemned unheard if the prayers sought are granted. That the orders being sought by the applicant can only be available in a main suit against those people he intends to evict as the respondent is not among those persons listed under prayer (2) of the application. That the application ought to have been served upon those people the applicant is purportedly seeking orders of eviction against as the respondent's counsel has never received instructions to act on behalf of the persons listed under prayer (2) of the application.

This court has considered the application and the submissions therein. The application is based on the grounds that the person listed in the application prayer two are trespassers and are strangers to the applicant. That the trespassers are illegally occupying the suit land and without authority of the applicant herein. I concur with the grounds of opposition by the respondent that the orders of eviction were never sought by the applicant in the main suit and consequently were never issued by the court in its judgment and the applicant cannot purport to obtain the same through a mere application. That the persons listed in prayer (2) of the application whom the applicant seeks to obtain eviction orders against were not party to the main suit, were never accorded an opportunity to be heard and are not even listed as parties to this application hence shall be condemned unheard if the prayers sought are granted. Indeed I find that the parties listed in the applications are strangers in this suit and the court. These are substantive orders and cannot be granted by way of such an application. I find this application is misconceived and an abuse of the court process and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23RD DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE