



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CASE NO. 133 OF 2014

SAMUEL MATUNDE MUCHINA.....PLAINTIFF/RESPONDENT

VS.

SAMUEL KIPTOO RUTO & 9 OTHERS.....DEFENDANTS

RULING

This ruling is in respect of an application dated 25th June 2020 by the defendant/applicants seeking for the following orders:

- a) Spent.
- b) That this court be pleased to stay the eviction order issued on 17th June 2020 pending the hearing and final determination of this application inter partes
- c) The eviction orders issued on 17th June 2020 be and is hereby set aside.
- d) The plaintiff to pay costs of the application.

Counsel agreed to canvass the application by way of written submissions which were duly filed. The applicant has argued that the orders were granted ex parte and the respondent was not given an opportunity to respond. Further that the order of eviction had not been granted in the judgment as it was not prayed for.

Counsel for the respondent opposed the application as it was an abuse of court process and a delaying tactic. That the applicant has filed another case being ELC No. 30 of 2020 to circumvent the cause of justice.

ANALYSIS AND DETERMINATION

This is an application which has been brought by the defendant/applicant who prays that the court sets aside the orders of eviction which are in respect of a judgement of the court. I have considered the submissions by both counsel and find that the issues for determination are as to whether the respondent is entitled to the eviction orders granted by the court.

By a plaint dated 23rd April 2014, the plaintiff/respondent herein sued the defendants for a declaration that the defendants are trespassers on the land parcel known as **UASIN GISHU/NDALAT/30** as they have no legally interest coupled with eviction orders of the defendants themselves, their servants and or agents from the land parcel known as **UASIN GISHU/NDALAT/30**, mesne profits, and damages for trespass to land.

The matter was heard and a judgment delivered on 5th December 2019 whereby the court found that the plaintiff had proved his case partially save for the prayer of mesne profits which is a special damage which must be specifically pleaded and proved. The court further found that the defendants are trespassers and that the plaintiff is entitled to general damages for trespass assessed at Kshs 200,000/

The judgment was very clear and that from the plaint it evident that the plaintiff prayed for eviction and that the court made declaration that the defendants were trespassers. Why would a court issue a declaration that a party is a trespasser then leave the party on the suit land? Would it be worthy going to court to get such orders without enforcement of the declaration? The application by the plaintiff respondent was for enforcement of the judgement seeking for police assistance in the implementation of the order. This does not amount to denying the applicant an opportunity to respond or the orders of eviction being granted ex parte.

This is a matter that had been finalized and it should be noted that the defendants were given an opportunity to defend themselves in the case but squandered that chance. The advocate on record also told the court that the defendants have not been attending court. The defence

case was closed without them giving evidence but their advocate filed submissions in the case and a judgment delivered on 5th December 2019.

I have considered the pleadings, the submissions by counsel and find that the application lacks merit and is therefore dismissed with costs.

DATED and DELIVERED at ELDORET this 22nd DAY OF JULY, 2020

M. A. ODENY

JUDGE