



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC NO. 806 OF 2013

RAHAB MUTHONI MBATIA.....PLAINTIFF

VERSUS

JOB KARANJA NGUGI.....1ST DEFENDANT

GEOFFREY KARANJA MWAURA.....2ND DEFENDANT

COUNTY LAND REGISTRAR KIAMBU.....3RD DEFENDANT

RULING

On **7th of July, 2014**, this court delivered a Ruling and issued the following orders: -

- a. *A **status quo** order is hereby entered to the effect that the plaintiff shall continue to occupy the suit property without interference. The Defendants are hereby restrained from transferring, disposing off, and charging or in any way alienating the suit property pending the hearing and determination of this suit on such further orders to the court.*
- b. *The parties are further directed to comply with the provisions of Order 11 of the Civil Procedure Rules with 30 days from the date hereof and the Plaintiff to take steps to set the suit down for hearing as soon as possible.*
- c. *Costs of the application shall be in the cause.*

It is on the above background that the Defendant/Applicant have alleged that the Plaintiff/Respondent herein has demolished a house that was allegedly on the suit premises and thus going against the **status quo order** issued by this court on **7th July, 2014**.

For the above reasons, the 2nd Defendant filed the instant Notice of Motion dated **22nd October, 2014** and sought further orders.

- i. *That the temporary injunction order made against the 1st and 2nd Defendant on 7th July, 2014 in favour of the Plaintiff be forthwith discharged set aside and/or vacated.*

ii. *That cost of the motion be accorded to the applicants.*

The application was premised on the grounds stated on the face of the application and on the supporting affidavit of the 2nd Respondent, **Geoffrey Karanja Mwaura**.

Among the grounds in support are that; the Plaintiff has demolished the existing house on the suit property without seeking the leave of the court to do so and under the pretext that she has a **Status Quo Order** issued on 7th July, 2014 to her benefit by this court. Further that such was an abuse of the court process and the order issued on **7th July, 2014** clearly stated that **“a status quo order is hereby entered to the effect that the Plaintiff shall continue to occupy the suit property without interference.** It was contended that the said order did not include the right to demolish the existing structure thereon as the **Status Quo** meant the said structures ought to continue existing undisturbed; therefore the Plaintiff ought not to be permitted to continue occupying the suit property without let or hindrance and the said order ought to be vacated as it is a **caite blandi** right to destroy the suit property.

The application is vehemently opposed by the Plaintiff/Respondent. The Plaintiff swore the Replying Affidavit and also attached a further Affidavit by **John Mungai Kangondu** an electrician from Githunguri. In her Replying Affidavits, the Plaintiff/Respondent averred that the application herein is spurious, vexatious and frivolous only meant to divert this court from the real issues by delaying the matter from going in for full trial. She further averred that on **7th July, 2014**, the Court directed the parties to comply with the pre-trial directions and set the matter down for hearing expeditiously. However, as the Plaintiff's Advocates tried to set the matter down for pre-trial hearing, the 2nd Defendant filed this application.

Further that the house referred to was direct, old and inhabitable and it collapsed by itself after the long rains. That after the house collapsed and since it had electricity cables and power meter box, she called an electrician, **John Mungai Kigondu**, who removed the meter box as well as any other loose electric wires that were posing danger. Therefore for the electrician to safely accomplish his task, he had to clear away some materials of the wreckage of the house in order to access the meter box as well as the electrical wire. It was her contention that the collapse of the house was an **act of God** and she did not contribute to its collapse. She therefore denied interfering with any of the properties thereon and she has not contravened the Ruling delivered on 7th July, 2014. She prayed for the dismissal of the 2nd Defendant's Notice of Motion.

In the further Replying Affidavit, **John Mungai Kigondu** averred that he is an electrical technician based at Githunguri and he confirmed that on **23rd August, 2014**, he was hired by the Plaintiff herein to remove the meter box and electrical cables from a house that had collapsed the previous night. That he cleared off some of the debris so as to access the meter box. It was his contention that the live electrical cables posed a great danger to life and property and therefore the need to remove them. He therefor denied that it the Plaintiff herein who demolished the house as the house collapsed on its own due to natural occurrence. That the only human intervention in the collapsed house was his removal of the power meter box and the electrical wires.

The 2nd respondent filed a supplementary affidavit and averred that **John Kigondu** was a hired electrician to sign the affidavit for the Plaintiff after she had demolished the house. That his affidavit is fake information meant to mislead the court. Further that the Plaintiff demolished the house during the dry spell and no rain had been received in the areas for about a month prior to the house being demolished. That the house was old but in good condition and habitable but the Plaintiff demolished the said house without seeking leave of the court. He continued that he bought the property with all the Developments therein and the Plaintiff could not associate the said property with her grandmother.

The parties herein canvassed this Notice of Motion by way of written submissions which I have carefully considered. I have also considered the pleadings herein, generally, the annexures thereto and the relevant provisions of the law and I make the following orders: -

There is no doubt that on **7th July, 2014**, the court issued an order of **status quo** to be maintained and also restrained the Defendants from transferring, disposing off, and charging or in any way alienating the suit property pending the hearing and determination of the suit. The court also directed the partes to comply with **Order 11** within a period of **30 days** after the ruling so that the matter could be set down for hearing immediately. That meant that by **7th August, 2014**, the parties ought to have started the process of setting the matter down for pre-trial conference.

I have noted from the letter dated **22nd September, 2014** that the Plaintiff's Advocate stated that they had complied with **Order 11** and requested for pre-trial date from the Deputy Registrar. It is not clear what steps the Defendants had taken towards achieving compliance with **Order 11** of the **Civil Procedure Act** by that time.

The application herein is brought under **Order 40 Rules 6 and 7** of the **Civil Procedure Rules and Section 1A, 1B and 63 (e) of the Civil Procedure Act**.

Order 40 Rules 7 provides that

“Any Order for injunction may be discharged or varied or set aside by the court on application made thereto by any party dissatisfied with such order.”

The order for injunction herein was issued on **7th July, 2014**. The **2nd** Defendant seemed to have been dissatisfied with the said order. However, he did not apply immediately for discharge or setting aside and variation of the said orders.

However, he is now brought the application on allegation that the Plaintiff herein went against the Order of **Status Quo** and demolished the house which was on the suit property. The Plaintiff on her part denied demolishing the said house but alleged that the same collapsed on its own as it was an old house and which was not habitated. That due to heavy rains, the same caved in and she only called an electrician to clear the electricity cables.

If indeed the Plaintiff went against the injunction orders that were issued by the court, then she was in contempt of the court and she ought to have been cited for contempt of the court orders. **Order 40 Rule 3(1)** deals with the issue of contempt of the court order.

“In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”.

The **2nd** Defendant ought to have filed an application under **Order 40 Rule 3(1)** asking the court to cite the Plaintiff for Contempt of the **Court Order**. The applicant should, therefore, not have filed an application for discharge of the injunction order because the Plaintiff has breached the same. I will rely on the case of **Reef-Building Systems Ltd Vs Nairobi City Council** as cited by Havelock J in the case of **Magnate Ventures Ltd & another Vs City Council of Nairobi and 2 others (2013) eKLR** (relied upon by the Plaintiff/ Respondent). In the **Reef Building Systems Ltd's case** the court stated as follows: -

“In the absence of any guidance, I have cogitated on the matter and come to the conclusion that as the order for injunction is an equitable relief issued to prevent the ends of justice from being defeated, it may be discharged or varied or set aside if it is shown it is contrary to the ends of justice to retain it in force. Such would be the case, I venture to think if it is shown for example that the order was irregularly obtained or there was such a subsequent changes in circumstances that it was unjust to maintain it in force or it was otherwise unjust and inequitable to let the order remain.”

The court herein issued the order of **Status Quo** so that the ends of justice can be met. The **2nd** Defendant

has alleged that the Plaintiff herein had demolished a house on the suit premises. If that is against the order of **status quo**, then the 2nd Defendant can bring the relevant application against the Plaintiff. The applicant therefore failed to meet the criteria for setting aside the Orders that were issued by the court on **7th July, 2014**.

I have noted that indeed there are very fundamental issues herein that needs to be resolved expeditiously so as to resolve as to who indeed owns the suit property. The spirit of **Section 1A and 1B of the Civil Procedure Act** is to have the matter herein heard expeditiously and the court has a duty to ensure that the overriding objective as stipulated by **Section 1A of the Act** are achieved.

The Court in furtherance to **the “overriding objective”** of the Civil Procedure Act directed the parties to set the matter down for pretrial directions with a period of **30 days** after the ruling delivered **on 7th July, 2014**.

The Plaintiff took steps to have pre-trial directions as evident from letter dated **19th August 2014** inviting the defendants Advocates for taking a date for pre-trial conference and a letter dated **22nd September, 2014** to the Deputy Registry, seeking for a pre-trial date. It is however, not clear whether the Defendants have complied with **Order 11**. If the parties had complied with **Order 11** as earlier ordered by the court, this matter would now have been certified ready for hearing. However, the instant application which was filed on **22nd October, 2014** delayed the pre-trial directions. I would urge the parties herein to shun numerous interlocutory applications so that the matter can be set down for hearing expeditiously.

Having now carefully considered the Notice of Motion dated **22nd October, 2014**, and the argument for and against the same, the court finds that said application same not merited and the same is hereby dismissed entirely. However, the Plaintiff’s action accused the 2nd Defendant to file this application. The **status quo** was to be maintained however, she did not consult the Defendant before removal of the said collapsed house or seek the authority of the court. The Plaintiff/Respondent will bear the costs of this application.

It is so ordered.

Dated, Signed and Delivered this **12th** day of **May, 2015**

L.GACHERU

JUDGE

In the Presence of:-

None attendance for the Plaintiff/Respondent

2nd Defendants in person

None attendance for the 3rd Defendant

Court Clerk: Hilda

L.GACHERU

JUDGE

Court:

Ruling read in open Court in the presence of the 2nd Defendant in person and none attendance by the

Plaintiff/Respondent.

L.GACHERU

JUDGE

12/5/2015