



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC MISC CASE NO. 28 OF 2017

DAVID KIARIE NJUGUNA

JAMES MUIRURI KAMAU

JOHN MARIGA KIMANI

T/A ENGINEER FANTASTIC YOUTH GROUP.....PLAINTIFF/APPLICANTS

VERSUS

JOHN MWANGI GITHIO.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is a Miscellaneous Civil Application under a certificate of urgency dated the 19th June 2017 brought under the provisions Order 40 Rule 1 and 2 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* and all enabling provisions of the law, wherein the Applicant herein prayed for orders of eviction against the Defendant herein from land parcel No. Nyandarua/Kitiri/5474.
2. The Application is supported on the grounds set out in the body of the motion as well as on the affidavit sworn by the Plaintiff/Applicants on the 19th June 2017.
3. On the 10th October 2017 when the matter was placed before me, I directed the Applicants to serve the Respondent whom I granted leave to file his response within 7 days upon service. The matter was then slated for mention on the 19th December 2017 on which day the court was not sitting. A date was fixed for the 9th April 2018 but parties were not present where another date for the 31st May 2018 was fixed.
4. On the said date, there was no appearance for the Respondent wherein Counsel for the Applicant informed the court that service had been effected upon the Respondent and sought for the matter to be disposed of by way of written submissions which he filed on the 31st July 2018.
5. I have considered the written submissions herein as well as the Affidavit of Service sworn on the 30th May 2018 wherein I note that an attempt to serve the Defendant/Respondent were futile as he had refused to disclose the location where he could be served. In this effect therefore, I find that there was no service effected upon the Respondent.
6. Coming to the gist of the matter, it is the Applicant's contention that he had bought the suit land from the Respondent who had received the value for the same wherein parties executed a consent agreement and the Respondent forfeited his rights and/ or interest on the subject suit by virtue of the sale.

Subsequently he gave vacant possession of the suit land but has continued to maintain a structure thereon the suit land, reasons for which the Applicant has sought for eviction orders against him.

7. I have anxiously considered the present application and find that the same seeks final drastic orders against the Respondent. I note that the Applicant/Plaintiffs did not comply with the requirements of Order 5 Rules 1 and /or Order 5 Rule 14 of the Civil Procedure Rules and proceed to find that there was no service of the Application upon the Respondent to enter appearance.

8. Secondly although there was an averment by the Applicant that through sale agreement between him and the Respondent, the Respondent had forfeited his rights and/ or interest on the subject suit by virtue of the sale, thereby putting the Applicants in possession of the same, there were no annexures attached to the said application in support of their averments.

9. Section 24(a) of the Land Registration Act states as follows; -

“the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.

10. The definition of the term “eviction” is captured under Section 2 of the Land Registration Act (LRA) which defines eviction as,

‘the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise’.

11. Section 152 E of the Land Act is to the effect that;

‘if the owner or the person in charge is of the opinion that ‘a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction’

12. The Plaintiff/Applicants have beseeched this Court to grant eviction orders against the Defendants/Respondents on the basis that they are the registered proprietors of No. Nyandarua/Kitiri/5474. I have painstakingly perused the Application for any evidence of ownership presented by the Plaintiff/Applicants in support of their ownership to no avail.

13. It is expected that the Plaintiff/Applicants should have presented to this Court a certified copy of title or at the very least a certified copy of official search or copy of the green card to confirm ownership of the suit land so as to help the court to determine the real question in controversy between the parties. This was not done which was in contravention of the provisions of Section 109 of the Evidence Act.

14. In my view, the Plaintiff/Applicants herein were too casual in their Application. They ought to have satisfied the provisions of the Land Act Sections 152E, 152F & 152G as may be applicable. I find that the application before court lacks merit and I thus proceed to strike out the same. With no costs as the matter was not defended.

Dated and delivered at Nyahururu this 28th day of January 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE