

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 131 OF 2015

JMK.....PLAINTIFF/RESPONDENT

VERSUS

AMM.....DEFENDANT/APPLICANT

RULING

1. In the Application dated 26th March, 2018, the Defendant/Applicant is seeking for the following orders:

a. That the orders granted on 8th March, 2018 be set aside and the Application dated 20th November, 2017 be set down for hearing inter parte on merit.

b. That the Applicant be granted leave to file fresh Affidavit to the said Application.

c. That costs of this Application be provided for.

2. The Application is based on the grounds that the Defendant is the wife of the Plaintiff; that the Defendant was condemned unheard; that the Defendant does not collect rent from the suit premises and that the Defendant vacated the suit premises immediately she was served with the orders of the court.

3. In response, the Plaintiff deponed that the Defendant is evasive as to when she moved out of the suit premises and ceased to collect rent; that the Defendant continued being in possession of five (5) rear rooms as well as two (2) front shops running a butchery and hotel and by her advocate's letter of 2nd October, 2017, it is clear that the Applicant has refused to vacate the suit premises.

4. In her Further Affidavit, the Defendant deponed that during the pendency of the Application and before the Ruling, she used to collect rent from three (3) rooms and that she vacated the rooms as soon as the order was issued by the court.

5. As at the time of writing this Ruling, the Defendant's/Applicant's submissions were not on record. The Plaintiff's/Respondent's advocate submitted that the Applicant has not denied that she was served with the orders of the court; that the Applicant has failed to state the exact date that she vacated the suit land and that the Applicant should proceed and make her mitigation and an appropriate sentence be meted out.

6. The record shows that on 8th March, 2018, the Plaintiff filed an Application dated 20th November, 2017 in which he sought for an order committing the Defendant to jail for being in contempt of the order of the court of 26th September, 2017. When the said Application came up for hearing on 8th March, 2018, the court expunged from the Record the Defendant's Replying Affidavit which had been served on the Plaintiff's advocate in court on the same day. The said Replying Affidavit was also incomplete because the annexures referred to in the body of the Affidavit were missing.

7. Having expunged the Replying Affidavit, the court proceeded to hear the Application for contempt ex-parte and allowed it. The Defendant was then ordered to appear in court for mitigation.

8. Although the current Application is seeking to set aside the orders of this court dated 8th March, 2018, no good reasons have been given as to why I should set aside the said orders. Indeed, there is no explanation from the Defendant or her advocate why she did not file a Replying Affidavit to the Application dated 20th November, 2017. The Defendant has not shown by way of Affidavit on which date she complied with the order of the court to enable the court exercise its discretion of setting aside the said orders in her favour.

9. In the circumstances, I decline to set aside the orders of 8th March, 2018. The Application dated 26th March, 2018 is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE