



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.267 OF 2015

KIBIRI FARRO NDIRANGU.....PLAINTIFF

VERSUS

JOSEPH MWANGI KIARIE.....DEFENDANT

RULING

(Application for eviction; parties having a consent judgment vesting land to the applicant; respondent still keeping a caretaker on the suit land; no right to do so; respondent to vacate or he be forcibly evicted)

1. The application before me is that dated 23 October 2018 filed by the plaintiff. The applicant seeks orders to have the defendant/respondent evicted from the land parcel Nakuru Municipality/Block 1/152 (the suit land).
2. The genesis of this suit was a plaint filed by the applicant on 23 September 2015. The applicant contended that he is the registered owner of the suit land and that the respondent had contrived to procure another title. He sought the revocation of any illegal transactions in the register of the suit land. In his defence, the respondent stated that he had purchased the suit land from one Samuel Burugu Mwangi, and had a title in his name.
3. On 19 April 2018, the parties entered into a consent, whereby they agreed that the suit land should be vested in the applicant and that the register should be rectified to reflect the applicant as the registered owner. There was also an agreement that the defendant will provide a breakdown of the cost he incurred in putting up a wall around the suit land, so that the applicant can consider it for a possible settlement. The parties also stated that they would agree on costs.
4. In this application, the applicant has averred that the respondent forwarded to him the costs of the wall which he rejected. By way of enforcing his right to compensation, the respondent put his caretaker on the premises and the said caretaker has denied the applicant access to the property. It is his view that the conduct of the respondent is illegal and in contempt of court. That is the reason he has sought the eviction orders through this application.
5. Despite being served, the respondent has not filed anything to oppose the motion. I do not therefore have the benefit of his side of the story and why he has thought it necessary to impede access to the applicant.
6. There is already a consent entered in favour of the applicant, vesting the applicant with ownership of the suit land. Since he is now the owner of the land, he is the one who holds all rights including the rights of ingress and egress. Once the respondent agreed that the applicant should be vested with the land, he lost all his rights over the suit land. I note from the consent that the applicant was to consider what he can compensate the respondent, but I do not believe that because of they have not been able to agree on the level of compensation, the respondent is entitled to keep possession of the suit land. It was therefore wrong for the respondent to keep a caretaker and deny the applicant access to the suit land for he (the respondent) can no longer claim to have any right to it.
7. It is for the above reasons that I am persuaded to grant the orders sought herein. I direct the respondent to remove himself and/or his servants/agents from the suit property within 7 days of today. If he does not do so, within this period, the court bailiff to ensure that he is evicted and vacant possession given to the applicant, upon expiry of this 7 days period.
8. The applicant shall have the costs of this application.

9 . Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 21st day of February 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Konosi holding brief for Mr. Githui for the applicant.

Mr. Ntabo holding brief for Ms. Njeri Muiruri for the respondent.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU