

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 160 OF 2014

PAS COMMUNICATION LTD.....PLAINTIFF

VERSUS

TERESIA WANGARE KINUTHIA.....DEFENDANT

RULING

PAS Communication Ltd hereinafter referred to as the decree holder has made an application that the Officer Commanding Station Langas Police Station be ordered to oversee and assist the plaintiff evict the defendant from land parcel No. Eldoret Municipality Block 14/824 by offering security.

The application is based on grounds the court decreed that the plaintiff is the rightful owner of the suit property to wit Eldoret Municipality Block 14/824. The defendant has refused to vacate the suit property despite having been served with a sixty (60) days' notice to vacate. The court had ordered the defendant to vacate the suit property within 60 days after being given notice. The plaintiff is being denied the fruits of the judgment delivered in this suit on 23rd November, 2018. If the orders sought are not granted, the decree of this court would have been issued in vain. It is in the best interest of justice that the orders sought are granted.

In the supporting affidavit, it is stated that on 23rd November, 2018, this court entered judgment in favour of the plaintiff and as against the defendant and an eviction order issued against the defendant, the court further directed that the defendant be given 60 days' notice within which to vacate the suit property. Subsequently, a decree was issued by the court on 13th day of February.

The defendant together with her advocates was served with a 60 days' notice to vacate the suit premises dated 23rd December, 2018. The 60 days lapsed on 23.2.2019.

Despite having been served with the notice to vacate the suit premises, the defendant has refused to vacate. That it is necessary for the O.C.S., Langas Police Station to oversee and assist the plaintiff evict the defendant from the suit land by offering security.

The plaintiff is being denied the fruits of the aforementioned judgment as it is unable to use develop or in any way deal with its property. The plaintiff's right to property as enshrined under Article 40 of the Constitution is being infringed on.

In the replying affidavit of Teresia Wangare Kinuthia, she states that for the records, she did through her advocates on record file a letter requesting for the proceedings in this matter on 13.12.2018 and a Notice of Appeal on 1.12.2019. That to date, the said proceedings have not been typed and or ready so they can prepare their appeal. That their intended appeal raises serious issues with high chances of appeal. That she has been in occupation of the suit parcel of land where he has been residing with her mother as she is not married. That it is a constitutional provision and a rule of natural justice that none should be condemned unheard. That if the orders sought herein are granted, she will suffer irreparable loss and damage. The applicant shall suffer no loss whatsoever as it has never been in possession of the suit parcel of land.

I have considered submissions of both counsels and do begin with the observation that the defendant has not applied for an order of stay of execution pending appeal.

Order 42, Rule 6 provides;

"6, (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside."

The defendant having failed to apply for stay of execution pending appeal, the plaintiff is entitled to the orders sought as an appeal does not operate as stay of execution. I do order that the O.C.S., Langas Police Station to oversee and assist the plaintiff evict the defendant from land parcel No. Eldoret Municipality Block 14/824 by offering security. Costs to the plaintiff. Orders accordingly.

Dated and delivered at Eldoret this 22nd day of March, 2019.

A. OMBWAYO

JUDGE