



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NO. 6 OF 2018

MARGARET KARWIRWA MWONGERA.....APPLICANT

VERSUS

FRANCIS KOFL.....RESPONDENT

RULING

(Application for eviction pursuant to Section 152E of the Land Act; application not opposed; application allowed).

1. This is a miscellaneous notice of motion application filed on 20 September 2018 pursuant to the provisions of Sections 152A, 152B, 152E, 152G, and 152F of the Land Act. The applicant seeks orders to have the respondent evicted from the land parcel Naivasha/Ol Jorai Phase II/876 and to deliver vacant possession to the applicant. The applicant has also sought orders that the OCS Elementaita Police Station do provide security during the eviction.

2. In her supporting affidavit, the applicant has deposed inter alia that she is the registered proprietor of the land parcel Naivasha/Ol Jorai Phase II/876 (hereinafter “the suit land”) having purchased it from the previous proprietor one Duncan Nyirisi Sakwa. She has stated that since she became registered as proprietor of the land she has been unable to access it as the respondent is in possession. She reported the matter to the area chief but the respondent did not appear upon being summoned. She then proceeded to serve the respondent with an Eviction Notice and also served other relevant bodies being the National Police Service and the County Commissioner. The eviction notice was to take effect on 20 September 2018 but the respondent has not moved out, nor has he filed any pleadings to oppose the eviction notice. To her affidavit, she annexed the sale agreement vide which she purchased the suit land and her title deed together with the official search. She has also annexed various letters from the chief of the area calling the respondent for a discussion. Also annexed is a “Notice of Eviction” dated 19 June 2018, and issued pursuant to Sections 152A, 152B, and 152E of the Land Act, 2012. There is also an affidavit of service sworn by one Ronald M. Njuguna, stating that he served the “Notice of Eviction” on 25 July 2018.

3. There is no response to this motion and I have given due consideration to the same.

4. The motion is premised on the provisions of Section 152E of the Land Act, 2012 which provides as follows:-

152E. Eviction Notice to unlawful occupiers of private land

(1) if, with respect to private land 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.

(2) the notice under subsection (1) shall—

(a) be in writing and in a national and official language;

(b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;

(c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and

(d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.

5. I have seen the eviction notice served upon the respondent. It is dated 19 June 2018 and cites Sections 152A, 152B and 152E. The provisions of Sections 152A and 152B respectively provide that a person shall not unlawfully occupy land and that evictions are to be undertaken as provided by the Land Act. It will be seen from Section 152E (d) that the eviction notice is supposed to be served upon the Deputy County Commissioner in charge of the area where the land is situated and also upon the OCPD of the area. I have seen that the notice was properly served.

6. I also take note that the applicant has demonstrated ownership of the suit land.

7. In as much as a reading of the provisions of Section 152E would imply that such an application is heard ex-parte, I think it is good practice that the respondent be served so as to give him an opportunity to respond. I therefore directed that he be served and he was duly served. He filed nothing in response. He has therefore not given any reason, despite being given an opportunity to do so, as to why he should not be evicted.

8. I have no reason to decline this application. I allow it. I order the respondent to be evicted from the land parcel Naivasha/Ol Jorai Phase II/876. The applicant is at liberty to appoint a court bailiff or auctioneer to evict the respondent. I further order the OCS, Elementaita to provide security during the eviction exercise.

9. The applicant shall also have the costs of this application.

10. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 6th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr Ikua holding brief for Mr. Kamau for the applicant.

No appearance for respondent.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU