



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO.100 OF 2018

JOHN CHUCHU MUCHAI.....PLAINTIFF/RESPONDENT

VERSUS

ANDREW NJENGA MUNGAI.....1ST DEFENDANT/RESPONDENT

IAN KAMAU MUNGAI.....2ND DEFENDANT/RESPONDENT

MARGARET NYAMBURA MUNGAI.....3RD DEFENDANT/RESPONDENT

ALLAN NGERE MUNGAI.....4TH DEFENDANT/APPLICANT

EDIGAR KAGO MUNGAI.....5TH DEFENDANT/APPLICANT

RULING

There is an *Amended Plaintiff* filed on **15th November 2018**, wherein the Plaintiff has sought for various prayers against the Defendants among them an order of eviction against the Defendants jointly and severally from the suit property with immediate effect. The suit property is ***Kiambaa/Kihara/2334***. In the *Amended Plaintiff*, the Plaintiff enjoined the 4th and 5th Defendants and it was alleged that the Defendants have trespassed on the suit property and have erected permanent structures thereon.

However, on **12th October 2018**, the 4th and 5th Defendants before their joinder to the suit had filed a *Notice of Motion* application dated **11th October 2018**, wherein they sought temporary injunctive orders against the Plaintiff seeking that the Plaintiff be restrained from evicting them, disposing off, selling and or alienating ***LR.No.Kiambaa/Kihara/2334***, wherein they reside. They alleged that Plaintiff has acquired an *Eviction Orders* against the Defendants and the 4th and 5th Defendants do claim beneficial interest on the suit property which claim had not been brought to the attention of the court.

The application is opposed by the Plaintiff and supported by the 1st, 2nd and 3rd Respondents. Written submissions have been filed which the Court had considered alongside pleadings herein.

It is evident that the Plaintiff is seeking for *Eviction Orders* against the Defendants. If that is the case, then the Defendants are in occupation. The 4th and 5th Defendants have alleged that the Plaintiff has served them with *Eviction Notice*, which they were not aware since they were not parties to this suit before.

Before evicting the 4th and 5th Defendants, the two need to be granted an opportunity to be heard and that opportunity will arise during the hearing of the *Amended Plaintiff*.

The Court finds that as provided by **Section 3A** of the **Civil Procedure Act** and the **Environment and Land Court Practice Directions No.32**, the necessary orders herein is an order of maintenance of the *status quo* order in respect of 4th and 5th Defendants/Applicants until the *Amended Plaintiff* dated **18th October 2018** is heard and determined. However this Order does not affect the earlier Orders against the 1st, 2nd & 3rd Defendants issued by this Court and the Court of Appeal. The Order is only in respect of 4th and 5th Defendants/Applicants, who have only been enjoined recently to the suit.

If after the main trial the Court will find the Plaintiff's case is merited, then an order of eviction against the 4th and 5th Defendants/Applicants will be granted as prayed together with other consequential orders.

From the foregoing, the Court makes the following orders. That the *status quo* prevailing at the moment over the suit property

Kiambaa/Kihara/2334 be maintained in respect of 4th and 5th Defendants/Applicants only until the **Amended Plaint** dated **18th October 2018** is heard and determined.

Further, parties to comply with Order 11 within the next 30 days so that the suit herein can be heard expeditiously and disputed issues resolved at once.

It is so ordered.

Dated, Signed and Delivered at Thika this 1st day of April, 2019.

L. GACHERU

JUDGE

1/4/2019

In the presence of

M/S Mwachiro for Plaintiff/Respondent

Mr. Wafula h/b for Mr. Mburu for 1st, 2nd & 3rd Defendants/Respondents

Mr. Kago for 4th & 5th Defendants/Applicants

Lucy - Court Assistant

Court – Ruling read in open court in the presence of the above advocates.

L. GACHERU

JUDGE

1/4/2019