



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 1198 OF 2013**

**TERESIA NJERI MWANGI (Suing as the legal representative of the estate  
of STEPHEN MWANGI MAINA(deceased)).....PLAINTIFF**

**VERSUS**

**SHANJI SHAMJI HIRJI.....1<sup>ST</sup> DEFENDANT**

**HIRJI PREMJI TRIJI RAJAN RANJANI.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR THIKA.....3<sup>RD</sup> DEFENDANT**

**I&M BANK LIMITED.....4<sup>TH</sup> DEFENDANT**

**RULING**

On 17<sup>th</sup> May, 2017, the parties herein filed in court a consent letter dated 9<sup>th</sup> May, 2017 compromising this suit on the terms that were contained in the said letter. On the same day, the parties appeared before Gitumbi J. who adopted the said consent as an order of the court. On 30<sup>th</sup> May, 2017, a decree was extracted and issued in accordance with the terms of the said consent. The decree provided among others that:

1. Upon payment of Kshs. 18,500,000/- to the plaintiff by the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally, the plaintiff was to relinquish all claims whatsoever on property known as Ruiru Kiu Block 2/3627(suit property), which property was to become fully vested and for all purposes owned by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the suit herein between the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants was to stand fully settled.

2. The said sum of Kshs. 18,500,000/- was to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> defendants within 90 days of the date of the consent and in default, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were to forthwith vacate the suit property and the duplicate title issued in their joint names was to stand revoked and/or cancelled.

What is now before me is the plaintiff's Notice of Motion application dated 29<sup>th</sup> September, 2017 seeking; an order for the eviction of the 1<sup>st</sup> and 2<sup>nd</sup> defendants from the suit property; an order that the O.C.S Ruiru Police Station does supervise the eviction of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and a permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants from interfering or in any way dealing with the suit property. The application was brought on the grounds that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have defaulted in the

payment of the said sum of Kshs. 18,500,000/-to the plaintiff and as such they are under obligation under the decree issued on 30<sup>th</sup> May, 2017 to deliver vacant possession of the suit property.

The application was served upon the advocates for the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the 4<sup>th</sup> defendant and no response was filed in opposition to the same. The defendants did not also attend court on 18<sup>th</sup> December, 2017 when the application came up for hearing. I have considered the application together with the affidavit filed in support thereof. I am satisfied that the application has merit. The decree issued herein on 30<sup>th</sup> May, 2017 required the 1<sup>st</sup> and 2<sup>nd</sup> defendants to pay to the plaintiff a sum of Kshs. 18,500,000/- within 90 days from 17<sup>th</sup> May, 2017 in default of which they were to vacate and handover the suit property to the plaintiff. As I have stated above, the plaintiff's application was not opposed. The averment in the application that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have defaulted in the payment of the said sum of Kshs. 18,500,000/- has not been controverted. I am of the view that the event that was to trigger the handing over of possession of the suit property by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the plaintiff having occurred, the plaintiff's prayer for the eviction of the 1<sup>st</sup> and 2<sup>nd</sup> defendants who have remained in possession of the suit property cannot be resisted. A part from the order of eviction, the plaintiff had also sought an order of injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendants. I have noted that an order of injunction was not granted to the plaintiff in the consent decree. The plaintiff's prayer for injunction has no basis in the circumstances. The plaintiff had a further prayer for police assistance during the eviction exercise which I think is in order.

For the reasons given above, the plaintiff's application dated 29<sup>th</sup> September, 2017 succeeds in part. The application is allowed in terms of prayers 1, 2 and 4 thereof.

**Delivered and Signed at Nairobi this 19<sup>th</sup> day of January, 2018**

**S. OKONG'O**

**JUDGE**

Ruling read in open court in the presence of:

Mr. Harris h/b for Mr. Njonjo      for the Plaintiff

N/A                                      for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

N/A                                      for the 3<sup>rd</sup> Defendant

N/A                                      for the 4<sup>th</sup> Defendant

Catherine                              Court Assistant