

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO 326 OF 2016

PASTOR JOSEPH MAWEU MUIA.....PLAINTIFF

-VS-

FRANCIS KIMUTUA NJAU.....DEFENDANT

RULING

1. By a Notice of Motion dated 6th June 2017, the Plaintiff seeks an order for summary judgment in favour of the Plaintiff as pleaded in the Plaint save for prayer (c). In the Plaint dated 31st October 2016, the Plaintiff is seeking a declaration that he is the rightful proprietor of **Nos.MN/VI/4065** and **MN/VI/4066** and a Permanent Injunction to restrain the Defendant, his agents, family and servants from trespassing into or interfering with the Plaintiff's quiet and peaceful possession of the Suit Properties. The Plaintiff also sought, but has now abandoned for general damages for trespass.

2. The Plaintiff's Application is based on the grounds set out in the face of the Motion and the Supporting Affidavit of Pastor Joseph Muia Maweu, the Plaintiff sworn on 6th June 2017. The Plaintiff has deponed that he is the registered owner of the Suit Property having purchased the same from Paul N. Kimutua, the Defendant's deceased father. He has exhibited the agreements for sale, transfer documents and copies of search certificates confirming that he is still the legal owner of the Suit Property.

3. The Defendant was served with summons to Enter Appearance but has failed to Enter Appearance or File Defence. The Defendant was also served with the present Application but has not filed any response to it, so the Application is not opposed.

4. I have considered all the issues raised in Application. The principles which guide the Courts in determining an Application for Summary Judgment are well settled. In the case of **GUPTA-V-CONTINENTAL BUILDERS LTD (1978) KLR 83**, the Court of Appeal stated:

“If no prima facie triable issue is put forward to the claim of the Plaintiff, it is the duty of the court forthwith to enter Summary Judgment for it is as much against natural justice to shut out without proper cause a litigant from defending himself as it is to keep a Plaintiff out of his dues in proper case. Prima facie triable issues ought to be allowed to go to trial just as sham or bogus defence ought to be rejected peremptorily.”

5. In the case of **Continental Butchery Ltd -v- Nthiwa (1989) KLR 573**, Madan JA stated:

“With a view to eliminate delays in the administration of justice which would help litigants out of their just dues or enjoyment of their property, the Court is empowered in an appropriate suit to enter judgment for the claim of the Plaintiff under the summary procedure provided under Order 35 subject to there being no bona fide triable issues which would entitle a Defendant leave to defend. If a bona fide triable issue is raised, the Defendant must be given unconditional leave to defend but not so in a case in which the Court feels justified in thinking that the defences raised are a sham.”

6. With the above quoted words, the first principles of applications for summary judgment are that where

there are no triable issues raised or where the triable issues raised are sham, the Court will grant an application for Summary Judgment to eliminate delays in the administration of justice. It is the application of this principle in the present case that will determine the outcome of the Plaintiff's Application herein.

7. The Plaintiff has demonstrated how he acquired the Suit Property from the Defendant's father. He has shown documentary evidence that he is the registered owner of the Suit Property. The Plaintiff has also submitted evidence of attempts to peacefully remove the Defendant from the Suit Property by involving the police. The Defendant was duly served but has failed to Enter Appearance or File Defence to the Plaintiff's claim. He has also been served with the Application and has not filed any response to it. The Defendant has not challenged the Plaintiff's claim. I am therefore unable to see any defence he would have to the Plaintiff's claim.

8. Having considered the Plaintiff's pleadings and the evidence on record, I do find that the Notice of Motion dated 6th June, 2017 is merited and the same is hereby allowed as prayed.

Delivered, signed and dated at Mombasa this 21st February, 2018.

C. YANO

JUDGE