



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 474 OF 2016

EMMAH W. M. KIMEMIA.....PLAINTIFF

VERSUS

JOHN NJENGA MITHIRI.....1ST DEFENDANT

MERCY NJERI NJOROGE.....2ND DEFENDANT

NYANDARUA PROGRESSIVE AGENCIES LTD.....3RD DEFENDANT

RULING

1. This is a ruling in respect of plaintiff's Notice of Motion dated 8th November 2016. The application seeks the following orders:

a) Spent.

b) An order of temporary injunction be issued against the 3rd defendant restraining it from issuing title deed to the 1st or 2nd defendant pending the hearing and determination of this application/suit.

c) A temporary order of injunction be issued against the 2nd defendant restraining her from using the title for the suit property charging a mortgaging it or cultivating the suit property namely till this application/suit is heard and decided.

d) Costs of the application be provided for.

2. When the application came up for inter parte hearing on 4th April 2017, counsel for the applicant indicated that he had just been served with a replying affidavit. He therefore sought and was granted 21 days within which to file a further affidavit. The matter came up again on 1st November 2017. The plaintiff had not yet filed the further affidavit. An application for adjournment made by counsel for the plaintiff was dismissed. Subsequently on the same date, an order was made that the application would be argued by way of written submission. The plaintiff was ordered to file and serve the further affidavit and written submissions within 14 days of 1st November 2017 and that in default the application would stand dismissed with costs.

3. A perusal of the record herein shows that no further affidavit was filed by the plaintiff and that plaintiff's submissions were filed on 15th December 2017, about 45 days from the date the orders of 1st November 2017 were made. Clearly, the plaintiff's submissions were filed out of the time allowed on 1st November 2017. In view of the default clause of the order of 1st November 2017, Notice of Motion dated 8th November 2016 stood dismissed with costs to the defendants on 16th November 2017. The plaintiff never sought leave from the court to admit the submissions out of time or to set aside the resulting dismissal of the application.

4. This court had occasion to consider a similar situation in **Nakuru ELC Case No. 399 of 2013 Lally Farm Ltd –vs- Attorney General and 4 others** reported as **Lally Farm Limited -V- Attorney General & 4 others [2017] eKLR**. The court stated in that case as follows:

8. The environment in which the business of the court is currently conducted is markedly different [from] that of yesteryears. The number of litigants approaching the courts for relief has grown tremendously. The courts have to be efficient in the use of time and other judicial resources. Amidst all this, the courts have given unto themselves a new challenge: slaying the dragon of case backlog. Parties must play their part in dealing with these challenges. Under sections 1A and 1B of the Civil Procedure Act both the court and litigants including their legal representatives have a duty to play their respective parts to assist the court to achieve its overriding objective which is the just, expeditious, proportionate and affordable resolution of disputes. This obligation extends to promptly complying with the directions and orders of the court, bearing in mind that court orders are not made in vain.

9. I have perused the record and I see that the 4th and 5th defendants filed their submissions on 15th September 2017, way beyond the 7 days that were given on 25th July 2017. Owing to 4th and 5th defendants' failure to file submissions by the end of the day on 1st August 2017, Notice of Motion dated 31st July 2014 stood dismissed with costs on 2nd August 2017. In the circumstances, I do not need to consider the application.

5. Parties have a cardinal duty to comply with the court's orders and directions. Such a duty is particularly grave when a litigant has, as the plaintiff herein did, approached the court under Certificate of Urgency. In the circumstances, I do not need to consider Notice of Motion dated 8th November 2016. It stood dismissed with costs to the defendants on 16th November 2017 and remains so dismissed.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of March 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Maina for the plaintiff/applicant

Ms. Alwala holding brief for Mr. Gai for the defendants/respondents

Court Assistants: Gichaba & Lotkomoi