



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 551 OF 2016

LINET WAIRIMU MUKUHA.....1ST PLAINTIFF

GRACE WAMBUI MUKUHA.....2ND PLAINTIFF

LUCY WANJIKU NYAGA (Suing at the administrator of the

Estate of JOSEPH NYAGA WAMBITI).....3RD PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST DEFENDANT

PHARIS NDUNG’U CHEGE.....2ND DEFENDANT

GURSHARN SINGH.....3RD DEFENDANT

CHIEF LAND REGISTRAR, NAIVASHA LAND REGISTRY...4TH DEFENDANT

NAIVASHA INDUSTRIAL COMPLEX LTD.....5TH DEFENDANT

RULING

1. This is a ruling in respect of 2nd defendant’s Notice of Motion dated 17th October 2017. The application seeks the following orders:

a) Spent.

b) That this honourable court be pleased to issue an order that all the monthly rental income paid to the plaintiffs by the tenants occupying the buildings on land parcel number Naivasha Municipality Block 6/117 and plot Numbers 1 and 2 on plot No. 103 at Naivasha be deposited in this case henceforth and the same be retained in court until this case is heard and decided.

c) That in the alternative to prayer (b) above, this honourable court do make an order that a registered and licensed estate agent be appointed by the parties herein jointly in default the court do appoint one who shall manage all the rental units in land parcel numbers Naivasha Municipality Block 6/117 and plots number 1 and 2 on plot number 103 at Naivasha and to collect and receive all the monthly rental income therefrom, retain the same in his or her account less his or her fees or charges, until this case is heard and decided.

d) That the costs of this notice of motion be borne by the plaintiff/respondents in any event.

2. The application is supported by an affidavit sworn by the 2nd defendant/applicant. She deposed that she is the registered proprietor of the parcel of land known as Naivasha Municipality Block 6/117 and that the plaintiffs have encroached on her said land by erecting a multi-storey building on 0.1372 hectares of the said land. That the entire building is occupied by tenants who pay rent to the plaintiffs. That she will suffer irreparably if the plaintiffs are allowed to reap profits from her land while the hearing of the case delays.

3. The application is opposed by the plaintiffs through replying affidavit sworn by the 1st plaintiff on 1st November 2017 and further affidavit also sworn by the 1st plaintiff on 21st December 2017. She deposed that the issue of rents in respect of the property is pending before the **Rent Restriction Tribunal** in Rent Restriction in Nairobi **Case No. 33 of 2017** in which the applicant is a party and wherein the tribunal made an order on 11th October 2017 dealing with the issue of payment of rent. She annexed a copy of the order. She added that the issue of

rent has since moved to the High Court in Nakuru **High Court Civil Appeal No. 137 of 2017** wherein the 2nd defendant herein and others have filed an appeal against the decision of the tribunal. As such, the present application is an abuse of the court's process.

4. Counsel for 1st defendant informed the court that the 1st defendant does not oppose the application. The 4th defendant did not file any response to the application.

5. The application was argued by way of written submissions. The 2nd and 3rd defendants filed submissions on 29th November 2017 while the plaintiffs filed submissions on 13th December 2017. I have considered the application, the affidavits and the submissions.

6. There is no dispute that there are proceedings pending at the Rent Restriction Tribunal in Nairobi in regard to the issue of payment of rent in respect of the suit premises and that an appeal against an order of the tribunal on the issue has since been filed as Nakuru High Court Civil Appeal No. 137 of 2017. There is further no dispute that the building that is the subject of the dispute was erected by the plaintiffs. The dispute at the heart of the matter is identity and ownership of the land on which the building was constructed. Once that is resolved the issue of entitlement to rent will fall in place.

7. Considering that there is already litigation in the Rent Restriction Tribunal and in the High Court on the issue of rent, I am convinced that granting the orders sought herein has the potential to exacerbate the dispute between the parties and may also result in conflicting orders with those made in the other litigations. On the other hand, once the case is heard, the court will have occasion to determine once and for all the issue of identity and ownership of the land where the building is located. Parties will have occasion to formulate their plaint or defences in such a manner as to address the issue of entitlement to rent or any other benefits accruing from the building.

8. I view of the foregoing, Notice of Motion dated 17th October 2017 is dismissed with costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 13th day of March 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Waiganjo for the Plaintiff/Respondents.

Mr. Karanja for 2nd & 3rd Defendants/Applicants.

No appearance for 1st Defendant.

No appearance for 4th Defendant.

Court Assistants: Gichaba & Lotkomoi