



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO 270 OF 2016

VICTORIA MERE DZILLA.....PLAINTIFF/RESPONDENT

VERSUS

DOUGHLAS MWANGI MUTERU.....APPLICANT/DEFENDANT

RULING

1. This is the Notice of Motion dated 8th November, 2017. It is brought under Order 22, Rules 6, 7, 8 and 9, Order 51, Section 1A, 1B, 3A and 63 of Procedure Act and Rules therein, and all enabling provisions of the law.

2. It seeks orders;

1. Spent.

2. Spent.

3. That the Court to assess the cost of demolition based on the Bill of Quantity submitted to court.

4. That the Court do issue any other order it deems fit in the circumstances of this case and further costs be provided for.

3. The grounds are on the face of the application listed as in paragraph 1-7.

4. The application is supported by the affidavit of Victoria Mere Dzilla, the Plaintiff/Decree holder sworn on the 8th November, 2017 and a further affidavit sworn on the 24th January, 2018.

5. The application is opposed. There is a replying affidavit sworn by Dauglas Mwangi Muteru, the Defendant/Judgment debtor sworn on the 24th January, 2018.

6. I have considered the Notice of Motion, the affidavits in support and the annexures. I have also considered the replying affidavit and the annexures.

7. I have considered the oral submissions of counsel I agree with counsel of the Respondent that the Applicant's further affidavit sworn on 24th January, 2018 was filed without leave of court. However, I find that the court has discretion allow such affidavit to be deemed to be properly filed. I exercise this discretion and allow the Applicant's further affidavit to be deemed to be properly on record.

8. I have considered the submissions by the Respondent that he has filed an appeal against the judgment of this court dated 5th October, 2017. He however has exhibited nothing to show that execution has been stayed pending appeal. There is nothing to show that an appeal has been preferred.

9. I have gone through the replying affidavit of the Respondent and find that it is an attempt to relitigate the issues dealt within the judgment. The receipts and invoices annexed to the affidavits in support have not been challenged.

10. I find merit in this application and I grant the orders sought namely;

a) That the costs of demolitions hereby assessed based on the Bill of Quantity submitted to court at Kshs329,909/=. I make no

orders as to costs.

It is ordered.

Dated, Signed and Delivered at Mombasa on the 13th day of March 2018.

L. KOMINGOI

JUDGE

13/3/2018