



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC. CASE NO. 1237 OF 2015**

**PHILLIS WANGUI KITAVI.....1<sup>ST</sup> PLAINTIFF**

**SIMON KIBAKI KANGETHE.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**STEPHEN PARASHO KAITO.....1<sup>ST</sup> DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated and filed on 3<sup>rd</sup> December 2015 in which the Plaintiffs/Applicants seek for an eviction order against the Defendant from the parcel of land known as Kajiado/Kitengela/74727 (hereinafter referred to as the "suit property") pending the hearing and determination of this suit. The Plaintiffs/Applicants also sought that the said eviction order be executed and supervised by the OCS Kitengela Police Station.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1<sup>st</sup> Plaintiff/Applicant, Phyllis Wangui Kitavi, sworn on 3<sup>rd</sup> December 2015 in which she averred that she and her husband purchased the suit property, which is 5 ha in size, from the Defendant. She further averred that the Defendant has refused to vacate 1 ha out of the 5 ha and has neglected to comply with the notice to vacate served upon him by the Plaintiffs. It is on those grounds that she sought for an eviction order. As proof of their ownership of the suit property, she annexed a copy of a title deed issued on 24<sup>th</sup> October 2014, which indicated the size of the suit property as being 1.5 ha and not 5 ha as alleged.

The Application is uncontested. Despite being duly served, the Defendant did not respond.

The issue that I am called upon to determine is whether or not to issue an eviction order directed at the Defendant compelling him to vacate the suit property. This suit was filed on 3<sup>rd</sup> December 2015 by the Plaintiffs by way of a Plaint in which they sought for judgment to be entered against the Defendant for:

- a. An eviction order for the Defendant to vacate the suit property;
- b. The Defendant be ordered to vacate the said parcel of land immediately;
- c. The OCS Kitengela Police Station do assist in executing the said eviction order; and,
- d. Costs of this suit.

As is clear, the Plaintiffs have sought in this Application the very same prayers sought in the Plaint. It is also clear that the orders sought in this Application are also final in nature. The main point is that the prayers that the Plaintiff/Applicant seeks in this Application are not prayers that can be granted in an interlocutory application such as this one. They are final in nature and would preempt the main trial of the suit. They cannot be granted at this interlocutory stage. Instead of filing this Application and pursuing it all this time, the Plaintiff should have simply set this suit down for hearing. For now, this Application is hereby dismissed. Costs shall be in the cause.

**DATED AND SIGNED BY LADY JUSTICE MARY GITUMBI AT NAIROBI THIS 12<sup>TH</sup> DAY OF APRIL 2018**

**MARY M. GITUMBI**

**JUDGE**

**DELIVERED BY JUSTICE SAMSON OKONG'O AT NAIROBI THIS 19<sup>TH</sup> DAY OF APRIL 2018**

**SAMSON O. OKONG'O**

**PRESIDING JUDGE**