



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 497 OF 2011

VICTORIA WAMBUI NJOROGE & ANOTHER

(Suing as the administrators of the estate of Njoroge Mugo) PLAINTIFF

=VERSUS=

EVANS KAGECHE BORO DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 10th January 2018 which seeks the following prayers:-

- 1. Spent**
- 2. Spent**
- 3. That the defendant – Evans Kageche Boro- be evicted from the suit premises being L.R No. 398/17 forthwith.**
- 4. That in the alternative, summary judgement be entered against the defendant as prayed in the plaint.**
- 5. That quantum of Mesne profit be conversed by way of formal proof.**
- 6. That the O.C.P.D – Naivasha be ordered to supervise and ensure that eviction order is fully executed.**
- 7. That the costs of this application and of eviction be paid by the defendant.**

2. This suit was stayed by consent on 4th October 2017 pending the hearing and determination of ELC case No. 255 of 2011. The advocate for the plaintiffs then was M/s Kingara & Co. Advocates. The Advocates for the defendant then as in the present is M/s S Musalia Mwenesi Advocates. The firm of Gichuki Kingara & Co. Advocates took over from M/s Kingara & Co. Advocates who then filed the present application.

3. The consent staying this suit was never set aside and therefore the filing of this application was un-procedural as no further proceedings can be taken after a suit is stayed. Even if there was no order staying these proceedings an order of eviction cannot be granted through an application at interlocutory stage. The respondent has filed a counter claim in which he is seeking costs of improvements to the suit property. The respondent is also contending that he had paid full purchase price in respect of the suit property before he was issued with a notice to vacate the suit premises.

4. There can be no summary judgement granted in this matter as the defendant/respondent is challenging the consent which was filed and even goes on to state that even after the consent was entered and the original land sub-divided into four portions, he had been given the first option to purchase from the owners of the sub divided portions. He goes on to state that he paid the purchase price for this particular suit property. It is therefore clear that no summary judgement can be entered in the circumstances. I therefore proceed to dismiss the notice of motion dated 10.1.2018 for not only having been filed irregularly but also for lacking merit. There shall be no order as to costs as the respondent had not filed any replying affidavit.

It is so ordered

Dated, Signed and delivered at Nairobi on this 28th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of applicant's counsel who were aware of the date and time of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE