



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

MISC. NO. 9 OF 1986

RICHARD BERSUCH NYAMBOI.....PLAINTIFF

VERSUS

CHEPTOO KIMUGE.....DEFENDANT

RULING

1. It is not easy to comprehend what the applicant herein wishes to do with these proceedings. Initially, he moved the court through Notice of Motion dated 24th January 2017 seeking the following Orders:

- 1. That the parcel of land otherwise known as land parcel No. 962 is owned by the applicant herein Richard Barsuch Nyamboi.***
- 2. That all those presently constructing a dam within applicant's piece of land No. 962 Kapchore/Keturwo thereof are trespassers and must give vacant possession forthwith.***
- 3. That the area Chief Sammy Taiwa Lawan Location do ensure compliance of this order.***
- 4. That costs of this application be in course***

2. When he appeared in court in person on 9th March 2017 for the hearing of the application, the applicant told the court that the respondent passed away in the year 2012. Subsequently, learned counsel Mr. Kipsang came on record for the applicant on 13th April 2017. Subsequently, Mr. Kipsang filed Notice of Motion dated 9th October 2017 on behalf of the applicant. It is this latest application that is the subject of this ruling. The orders sought in the application are:

- 1. That vacant possession of the suit land No. Kapchore/Keturwo/962 surrendered to the applicant herein Richard Barsuch Nyamboi.***
- 2. That the order to surrender vacant possession of the suit land be effected and/or supervised by the Officer Commanding Station (O.C.S) Kabartonjo Police Station.***

3. When the application came up for inter parte hearing on 14th February 2018, Mr. Kipsang urged the court to allow the application. When asked whether the application was served, he stated that there is no one to be served. That in itself is a curious position considering that vacant possession is sought in the application. How can the applicant seek to evict non-existent persons?

4. In other words, how can the applicant say there is no one to serve yet he wishes to evict certain persons? But the confusion does not end there. The applicant seems to claim that there are certain previous orders made in another matter or other matters and that he is entitled to vacant possession pursuant to those orders. If that be the case, I do not see how the order can be sought in a miscellaneous cause. Such orders can only be sought in the proceedings in which the decree for vacant possession was issued.

5. All in all, Notice of Motion dated 9th October 2017 cannot succeed in its present form. It is hereby dismissed. No order as to costs.

Dated, signed and delivered in open court at Nakuru this 22nd day of May 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the applicant

No appearance for the respondent

Court Assistants: Gichaba & Lotkomoi