



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 13 OF 2008

VINCENT E. MUKOKO.....PLAINTIFF

=VERSUS=

ABDIRAHMAN ABDINUR.....DEFENDANT/RESPONDENT

AND

HARUN OMOM OKAL OKEYO.....INTERESTED PARTY/APPLICANT

RULING

1. This is the Notice of Motion dated 7th December 2015. It is brought under Section 1A, 3A of the Civil Procedure Act, Order 26 rule 1 and 6, Order 40 rule 11 of the Civil Procedure Rules and all enabling provisions of the law.

2. It seeks orders:-

(1) That pending the hearing and determination of the suit, an order be issued directing the defendant/respondent to deposit mesne profits accrued and accruing over the suit property to the applicant to joint account of Okwach & Company Advocates and Hassan N. Lakicha & Company Advocates or in court or as the court may ably direct.

(2) That the defendant/respondent does deposit into court a sum of Kshs.5,000,000/- within fourteen (14) days or within such time as may be determined by the court as security for mesne profits that may be found to be due to the interested party/applicant.

(3) That in default, the defendant be evicted from the suit property.

(4) That costs of this application be provided for.

3. The grounds are on the face of the application and are listed as in paragraph a to c.

4. The application is supported by the affidavit of Harun Omom Okal Okeyo, the interested party/applicant sworn on the 7th December 2015.

5. The application is opposed. There is a replying affidavit sworn by Abdirahman Abdinur the defendant/respondent on the 23rd September 2015.

6. The plaintiff does not oppose the application.

7. I have considered the notice of motion, the affidavit in support and the annexures. I have considered the replying affidavit and the annexures. I have also considered the oral submissions of counsel. The issue for determination is whether the application is merited.

8. It is the applicant's case that since 2008, he has not received any rent from the defendant. The defendant is in the premises, without paying rent and he continues to suffer.

9. It is the defendant's/respondent's case that the plaintiff's purported sale and transfer to the applicant is null and void as there was a valid court order barring any transaction. In paragraph 10 of his replying affidavit he depones;

“That in response to paragraph 8 of the affidavit, I have been paying rent to the plaintiff’s advocate but he has always declined to accept and returned the cheques”.

This is a confirmation that the defendant has not been paying rent.

10. I have gone through correspondences attached, between the firm of Ashiruma & Co. Advocates and Hassan Bulle & Company Advocates. They are a confirmation that the defendant was aware that rent was payable to the interested party/applicant. I therefore find that his opposition to this application is merely to deny the applicant the rent that is payable to him considering all circumstances.

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

(a) That pending the hearing and determination of the suit, an order is hereby issued directing the defendant/respondent and/or legal representatives to deposit mesne profits accrued and accruing over the suit property to the applicant to a joint account of Okwach & Company Advocates and Hassan N. Lakicha & Company Advocate.

(b) That the defendant/respondent and/or legal representatives does deposit into court a sum of Kshs.2,500,000/- within sixty (60) days as security for mesne profits that may be found to be due to the interested party/applicant.

(c) That in default, the defendant and/or legal representatives be evicted from the suit property.

(d) That costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18TH day of OCTOBER 2018

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L. KOMINGOI

JUDGE