

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 205 OF 2017

LEONARD MAKWA SHIBWONI.....PLAINTIFF/RESPONDENT

VERSUS

SAMSON MAKHAYA MUKABANA.....DEFENDANT/APPLICANT

RULING

This application is dated 28th May 2018 and is seeking the following orders:-

1. That this application be certified as urgent and fit to be heard ex-parte in the first instance and/or on priority basis.
2. That the demolition of the defendants house on the suit property by the plaintiff is manifestly illegal and irregular.
3. That this honourable court issue a warrant of arrest and compel the OCS Kabras Police Station to produce the plaintiff in court to answer charges regarding OB. NO. 33/14/11/2017 which was reported to the police station.
4. That the OCS Kabras Police Station to ensure compliance on the same.
5. That cost of this application be in the cause.

It is brought on the following grounds that if this application is not determined ex-parte in the first instance, the defendant stands the risk of unlawful being dispossessed of the whole suit property which is the only dependent and source of income for the family and himself. The plaintiff intends to realize his right of demolishing and seizing the defendant's only house by unlawfully evicting him and the family in a purported attempt to exercise his dues without any orders/notices. It is inequitable and illegal for the plaintiff to enforce it right against the defendant prior to determination of this suit and/or without following the substantive procedure. The action to forcefully demolish and evict the defendant contravenes the express provisions of the Land Act. The defendant stands to suffer irreparable loss and damage should the plaintiff continue to construct the structures on the suit property in that he shall be rendered a destitute.

The respondent submitted that, he has not demolished any house belonging to the defendant/applicant. That the defendant/applicant's house fell down due to lack of maintenance and old age. That the defendant/applicant failed to maintain the house and hence should not blame him for what happened to his old house. That the defendant/applicant has never served me with any court order which he has failed to comply. That any complaint raised by the defendant/applicant at Kabras Police station should be handled by the police and not the court. That the defendant/applicant's application lacks merit and the same should be struck off with costs.

This court has considered the application and the submissions herein. The plaintiff intends to realize his right of demolishing and seizing the defendant's only house by unlawfully evicting him and the family in a purported attempt to exercise his dues without any orders/notices. The applicant in his submissions stated that this was family land and subject to Succession Cause No 624 of 2014. I find that the orders sought cannot be issued by way of an application. It is not even clear whether or not this court has jurisdiction to entertain this matter or whether it is sub judice. Parties are advised to take a hearing date in this matter. As it stands now this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE