



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CASE NO.267 OF 2018**

**LUCY WAMBUI KAMAU.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**PETER KIBE KAMAU.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**-VERSUS-**

**LEONARD NGANGA KARUGA.....DEFENDANT/APPLICANT**

**RULING**

The Applicants have filed an *Originating Summons* dated **5<sup>th</sup> November 2018** seeking to be declared the registered proprietors of the suit property **LR.No.Kabete/Gathiga/T.180**, by virtue of having lived on the suit property in an open and peaceful possession and occupation since **1967**. They have alleged that the Defendant has recently acquired the suit property and has never occupied the same. However, he has threatened to demolish the Plaintiffs' houses and has even disconnected electricity and is intending to evict them. They have therefore sought for various conservatory orders in the *Notice of Motion* dated **5<sup>th</sup> November 2018**.

The Defendant/Respondent has filed a *Replying Affidavit* dated **27<sup>th</sup> November 2018**, and had admitted having acquired the suit property recently as an innocent purchaser for value. That he intends to take possession and develop the suit property **LR.No.Kabete/Gathiga/T.180** and he therefore expects the Plaintiffs/Applicants to move out voluntarily.

There is no doubt that the Defendant acquired the suit property on **3<sup>rd</sup> October 2018**, as is evident from the title deed attached to his Replying Affidavit. He has admitted that he expects the Plaintiffs/Applicants to move out voluntarily from the suit property. However, the Plaintiffs/Applicants have averred that they have lived on the suit property all their lifetime from **1967**. The issues of whether the Plaintiffs have lived on the suit property from **1967** and whether the Defendant/Respondent is an innocent purchaser are issues which can only be determined in the main trial.

However, it is evident that the Defendant acquired the suit property on **3<sup>rd</sup> October 2018** and he does expect the Plaintiffs/Applicants to move out voluntarily.

Therefore the Court finds that the Plaintiffs/Applicants stay on the suit property is threatened or there is a danger of them being evicted from the suit property before the contested issues have been resolved. This is a matter that deserves conservatory orders.

For the above reasons, the Court allows the Applicant's *Notice of Motion* dated **5<sup>th</sup> November 2018** in terms of **prayers No.5, 6, 7 and 8**.

Further the Defendant is restrained from seeking vacant possession for the Plaintiffs until the *Originating Summons* is heard and determined. Costs shall be in the cause.

Further, the Respondent is granted leave of **14 days** to file his response to the *Originating Summons* and Plaintiffs have correspondence leave to file any response if need be. Mention on **27<sup>th</sup> February 2019** for taking directions on how to proceed with the *Originating Summons*.

This *Ruling* therefore disposes off the *Notice of Motion* dated **5<sup>th</sup> November 2018**.

It is so ordered.

**Dated, Signed and Delivered at Thika this 28<sup>th</sup> day of November 2018.**

**L. GACHERU**

**JUDGE**

In the presence of

Mr. Kamau for the Plaintiffs/Applicants

Mr. Magani holding brief for Mr. Mwaura Shairi for the Defendant

Lucy - Court clerk

**L. GACHERU**

**JUDGE**

**28/11/2018**