



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 139 OF 2017

PHOEBE WANGUI GAKUI.....PLAINTIFF

-VERSUS-

LUCY WAMBUI.....1ST DEFENDANT

WESTERN EXPRESS COACH.....2ND DEFENDANT

NAIROBI CITY COUNTY.....3RD DEFENDANT

RULING

The 3rd Defendant, Nairobi City County seeks an order for termination of the tenancy and eviction of the 1st Defendant from the apartment known as House 136/56 Joseph Kang'ethe Estate Nairobi. The application is brought under Section 73 of the Land Act. It is made on the grounds that the notices to terminate tenancy have been ignored or disregarded by the 1st Defendant and the 3rd Defendant requires an eviction order to carry out its mandate. Further, that the 1st Defendant breached the terms of the lease by operating a car wash and repair centre for commercial long distance buses in House No. 186/56, Joseph Kangethe which is strictly a residential area.

Following complains by neighbours, the 3rd Defendant issued a notice of termination to the 1st Defendant on 14/2/2017. The 1st Defendant obtained orders on the magistrate's court on 23/3/2017 barring the 3rd Defendant from evicting her. The orders expired on 1/12/2017. The Applicant relied on the ruling from the Honourable P. O. Muholi, Senior Resident Magistrate given on 1/12/2017 where the court found that the 1st Defendant was in breach of the tenancy agreement which prohibited the use of the demised premises for commercial purposes. The court found that she was not entitled to the protection of the court.

The 3rd Defendant issued another notice on 16/6/2017 to the 1st Defendant who failed to adhere to it. The 1st Defendant filed High Court (Commercial Division), Misc. 149 of 2018 seeking to file an appeal out of time.

The Plaintiff filed a replying affidavit in which she accuses the 3rd Defendant of being complicit in the nuisance perpetuated by the 1st Defendant. She sought the intervention of the 3rd Defendant on numerous occasions but did not receive any assistance. The Plaintiff does not have any issue with the tenancy and occupation of the premises by the 1st Defendant and urges that this was never raised as an issue in the substantial suit.

The 1st Defendant filed a replying affidavit in opposition to the application for her eviction from the suit premises. She claimed that she is the legal tenant and daughter of the late Meshack Kamau who resided in the Suit Property and that she has been living there since 1968. She claims that the 3rd Defendant allowed her son and his friends to operate a carwash in the suit premises and that this was done procedurally with the 3rd Defendant approval. She explained that the noise that the Plaintiff complained of was caused by the gravelling machines and lorries which were bringing stones to the suit premises for about 2 months. She averred that she stands to suffer irreparable damage if the orders sought are granted having stayed in the Suit Property since her childhood.

Parties made submissions. The 3rd Defendant urged the court to grant the eviction order. The 1st Defendant argued that the 3rd Defendant gave the 1st Defendant a license to carry out the business in the suit premises which was the cause of the nuisance. She urged the court to disallow the application since the nuisance has stopped and the carwash business also stopped.

The court has considered the application, the affidavit and the submissions. Section 73 and 75 of the Land Act provides for the lessor's right of forfeiture where the lessee breaches the lease conditions. Under Section 73(2)(b) the right may be enforced by action in the court. The right of forfeiture is exercised after giving notice to the lessee.

The court agrees with the Plaintiff that the court ought not to grant the orders sought by the 3rd Defendant in this suit which the Plaintiff

brought against the Defendants complaining of nuisance. The 3rd Defendant can enforce its right by bringing an action against the 1st Defendant for forfeiture.

The court declines to grant the orders sought in the application dated 4/6/2018. Each party will bear its costs.

Dated and delivered at Nairobi this 6th day of December 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Kepha holding brief for Mr. Nyaribo the 3rd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the Defendants