

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. NO. 392 OF 2008

CITY COUNCIL OF NAIROBI.....PLAINTIFF

VERSUS

JOEL KANI OLE SIKAMOIDEFENDANT

RULING

Coming up before me for determination are two applications both brought by the Defendant/Applicant. The first is the Notice of Motion dated 29th October 2014 seeking orders of mandatory injunction to issue to evict the Plaintiff/Respondent from the property known as Land Reference Number 11973 Garden Estate Shopping Centre (hereinafter referred to as the “suit property”) and Notice of Motion dated 17th June 2015 seeking an order of eviction against the Plaintiff/Respondent from the suit property.

Both Applications are premised on the Supporting Affidavits of the Defendant/Applicant, Joel Kani Ole Sikamoi, sworn on 29th October 2014 and 17th June 2015 in which he averred that he together with others are the joint registered and lawful proprietors of the suit property. He added that they have a valid title deed and until the same is removed, they remain the sole owners and should be allowed to enjoy their lawful property and have access to the same. He averred further that the Plaintiff/Respondent has unlawfully and irregularly encroached into the suit property and has started putting up permanent structures on the said property without their consent. He added that vide a Decree of this Honourable Court issued on 19th July 2012, the Plaintiff/Respondent conceded that indeed they are the registered proprietors of the suit property but still insist to illegally occupy the same. He added that they are entitled to vacant possession of the suit property hence these Applications.

The Applications are opposed. The Plaintiff/Respondent filed their Grounds of Opposition dated 25th September 2015 in which they stated that the Applications are bad in law and lack merit, they are an abuse of the court process, they are res judicata and have been overtaken by events.

The Decree relied upon by the Defendant/Applicants was entered by consent of both parties and read as follows:

“That this matter be and is hereby marked as settled on the following terms:

a) That the Defendant as the registered proprietor do forthwith pay all outstanding rates on L. R. No. 11973 (Title No. I.R. 88002) situate in Nairobi to the Plaintiff.

b) That each Party to bear his own costs.”

It is the Defendant’s position that this matter was concluded by consent as set out above. Consent Judgments are unique in the sense that strict adherence must be given to the terms of settlement. In this particular case, the terms of settlement only made reference to the question of payment of outstanding rates. There was no agreement on the question of possession of the suit property. That being the case, the Defendant/Applicant cannot at this juncture rely on the stated consent judgment to request for an order of

eviction. Such an order can only be granted either upon the consent of the Plaintiff, which is not the case here, or after the full trial of the suit and the court making such a finding, which again is not the case here. That being the case, It is my finding that neither of the two Applications can succeed and I hereby dismiss them with no order as to costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY 2017.

MARY M. GITUMBI

JUDGE