

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 500 OF 2014

ANNE WANJIKU GATHONI alias

ANNE WANJIKU LIDONDE.....PLAINTIFF

VERSUS

MONICA MWIKALI MWANZIA..... RESPONDENT

RULING

I have considered Notice of Motion dated 25/6/2014 which seeks an order committing the Defendant into civil jail for disobedience of this court's orders issued on 25/4/14. The Plaintiff also seeks the court to issue an order directing the Defendant to vacate the suit property.

I do observe that it is indeed the correct position that this court did issue an order on 25/4/2014 allowing prayer No. 2 of the Plaintiff's Notice of Motion dated 24/4/2014 which is to date yet to be heard and determined. The gist of that order was as follows:

The Defendant and her husband/Representative Mr. Mwanzia Musyoka whether by themselves or acting through servants, employees, watchmen and/or agents be restrained from further trespassing, remaining and/or in any way interfering with the Plaintiff/Applicant's Land Title Ngong/Ngong/21441 pending interpartes hearing and determination of this application or further orders of the Honourable court.

Those orders remain in force as Notice of Motion dated 24/4/2014 is yet to be heard and determined.

The position facing the court at this point is the apparent continued occupation of the suit property by the Defendant which the Plaintiff seeks to address by seeking an order of eviction as per the terms of prayer No. 3 of this Application. Such an order cannot be issued through an interlocutory application due to its final nature. Such an order can only be issued after this suit is fully heard and determined.

It is my further observation that interlocutory judgment has indeed been entered into this matter against the Defendant on 23/9/2015. It would appear to me that the best course of action would be for the Plaintiff to fix this matter for formal proof so that she may get a final determination of this suit.

In the meantime and for the reasons enunciated above, this application is dismissed. Costs in the cause.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE