



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 69 OF 2017

EDINAH CHEPKORIR MAINAPLAINTIFF

VERSUS

PAUL KIPROTICH KOECH1ST DEFENDANT

THE DISTRICT LAND ADJUDICATION

SETTLEMENT OFFICER2ND DEFENDANT

THE DISTRICT LAND REGISTRAR NAKURU3RD DEFENDANT

RULING

(Application for injunction; plaintiff seeking an order compelling a defendant to vacate suit property; no evidence that the defendant had entered the suit property; it is always important that a party pleads his case clearly and adduces sufficient evidence in support; no prima facie case has been established; application dismissed)

1. The plaintiff filed this suit on 28th February 2017. In the plaint dated 23rd February 2017, she seeks judgment against the defendants for orders:

- a) That there be an order of injunction restraining the 1st defendant, his agents and or servants from remaining on plot No. 347 Kamara Settlement Scheme.
- b) An order of eviction evicting the 1st defendant, his agents or servants from plot 347 Kamara Settlement Scheme.
- c) An order that the District Land Registrar releases the title deed for plot 347 Kamara Settlement Scheme to the plaintiff.
- d) Costs of this suit.

2. Alongside the plaint, the plaintiff also file a Notice of Motion dated 23rd February 2017 in which she sought orders:

1. [Spent]

2. [Spent]

3. That pending the hearing and determination of this suit, there be orders of injunction restraining the 1st defendant, his agents and or servants from remaining on plot No. 347 Kamara Settlement Scheme.
4. That the honourable court be pleased to issue an order of eviction evicting the 1st defendant, his agents or servants from plot 347 Kamara Settlement Scheme.
5. That the honourable court be pleased to issue an order that the District Land Registrar releases the title deed for plot 347 Kamara Settlement Scheme to the plaintiff.
6. That costs be provided for.

3. According to an affidavit of service filed in court on 5th April 2017, all the defendants were served with the plaint, summons and the application. The Attorney General entered appearance on 13th March 2017 for 2nd and 3rd defendants. None of the parties filed any response to the application.

4. The application came up for inter parte hearing on 5th April 2017. There was no appearance for any of the defendants. In view of the affidavit of service already referred to above, the court was persuaded that service had been duly effected. Consequently, the hearing of the application proceeded.

5. Counsel for the plaintiff indicated to the court that she was seeking prayers 1, 2 and 3 of the application. By implication, the remaining prayers were thereby abandoned. Counsel relied entirely on the affidavit in support of the application and urged the court to grant the aforesaid prayers.

6. Prayers 1 and 2 of the application were dealt with when the matter was placed before the court under certificate of urgency on 1st March 2017. Consequently, those two prayers are spent. That only leaves prayer 3.

7. The plaintiff's case is that she was allocated plot No. 347 Kamara Settlement Scheme on 27th January 2012 by the District Land Adjudication and Settlement Officer. She exhibited a letter of offer dated 9th March 2012 addressed to her by the Director of Land Adjudication and Settlement through which she was offered the plot. She was required to pay KSh.11,111.59 for the plot. She paid KSh. 11,600 on 14th May 2012 to the Government and was issued with a receipt. She further deposes that on 20th October 2016, other allottees were issued with title deeds but she was not. Upon enquiry she was informed that the 1st defendant had laid claim on plot No. 347 Kamara Settlement Scheme thereby leading to the plaintiff not being issued with the title deed.

8. I have considered the application and counsel's submissions. The application is not opposed. Still, the applicant must establish a case to merit the orders sought. In other words, the applicant must prove her case. A reading of the plaint and the affidavit in support of the application shows that the plaintiff blames the 1st defendant for her not receiving title deed in respect of the suit property. Her complaint is that the 1st defendant lodged a claim in respect of the suit property or in respect a boundary between 1st defendant's property and the suit property. Unfortunately the plaintiff has not been clear in her pleadings as to exactly what the 1st defendant did. It is always important that a party pleads his case clearly and adduces sufficient evidence in support. I cannot confidently say that the plaintiff has been diligent in that regard.

9. I say so because whereas prayer 3 of the application seeks an order to restrain the 1st defendant, his agents and or servants "from remaining" on the suit property, there is no evidence that the 1st defendant has entered upon the suit property. The only evidence presented albeit hazily, is that the 1st defendant lodged a claim or complaint in respect a boundary between 1st defendant's property and the suit property. As pleaded, prayer 3 of the application essentially seeks an eviction order against the 1st defendant.

10. To succeed in the prayer for injunction, the plaintiff must establish a prima facie case against the 1st

defendant. From the material placed before the court, I am unable to reach any conclusion that the 1st defendant has entered the suit property and that he therefore needs to be evicted. No prima facie case has been established. In the circumstances, I need not determine whether the other tests for granting an injunction have been established. The application is dismissed. No order on costs.

Dated, signed and delivered in open court at Nakuru this 27th day of April 2017.

D. O. OHUNGO

JUDGE

In the presence of:

..... for the plaintiff

..... for the 1st defendant

..... for the 2nd and 3rd defendants

Court Assistant: Gichaba