



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 2 OF 2015

EMAN KAMUNYA KITHAKA.....PLAINTIFF

VERSUS

PETER KINYUA KAMUNYA.....DEFENDANT

RULING

On 26th February 2016, this Court delivered a judgment in favour of the plaintiff cancelling the registration of the defendant as proprietor of land parcel No. KIRINYAGA/GATHIGIRIRI/698 and ordering that the plaintiff be registered as proprietor of that land (hereinafter the suit land). The defendant's application to review that judgment was dismissed by this Court on 3rd March 2017.

On 10th May 2016, the plaintiff moved this Court by his Notice of Motion dated 9th May 2016 seeking the following remedies:

1. Spent.

2. That this Honourable Court be pleased to issue a temporary injunction against the defendant restraining him, his agents and/or servants from damaging, wasting, cutting down trees, cultivating, transferring, alienating and/or otherwise interfering with land parcel No. KIRINYAGA/GATHIGIRIRI/698 pending the hearing and determination of this application.

3. That this Court be pleased to issue an eviction order against the plaintiff (sic) to be removed from land parcel No. KIRINYAGA/GATHIGIRIRI/698.

4. That this Court be pleased to authorize M/S Quickline Auctioneers to remove the defendant, his agents, servants and/or employees from the land parcel No. KIRINYAGA/GATHIGIRIRI/698.

5. That this Court be pleased to order the O.C.S Wanguru Police Station to provide security during the exercise.

6. That the costs of this application be provided for.

The application is premised on the grounds set out therein and also supported by the plaintiff's affidavit in which he depones inter alia, that following the judgment dated 26th February 2016 and from which no appeal has been filed, the defendant is committing acts of wastage by cutting down the plaintiff's trees and should be evicted so that the plaintiff can enjoy the fruits of his judgment.

Though served with that application, the defendant neither filed any reply nor grounds of objection or

even attend Court for the said application and when it came up for hearing on 26th April 2016, MR. MWANGI advocate for the plaintiff asked me to grant the prayers therein .

As the application is not opposed, this Court can only grant the prayers sought therein. The only prayer that I find curious is the prayer for temporary injunction under **Order 40 Rule 1 and 2 of the Civil Procedure Rules**. Under that provision, a temporary injunction can be granted by the Court pending **“the disposal of the suit or until further orders”**. As indicated above, this suit was disposed off on 26th February 2016 and so there is no pending suit upon which such an order can be granted. That prayer is therefore not available to the plaintiff.

I am also not persuaded to grant prayer No. 5 which seeks that the OCS Wanguru Police Station provides security during the eviction exercise. Ideally, the Police should not be involved in the civil process. Under **Section 24 of the National Police Service Act of 2011**, the functions of the Kenya Police Service are provided as follows:

“(a) provision of assistance to the public when in need

(b) maintenance of law and order

(c) preservation of peace

(d) Protection of life and property

(e) Investigation of crimes

(f) Collection of criminal intelligence

(g) Prevention and detection of crime

(h) apprehension of offenders

(i) enforcement of all laws and regulations with which it is charged; and performance of any other duties that may be prescribed by the Inspector General under this Act or any other written law from time to time”

The plaintiff, or any other party for that matter, does not need an order from this Court to provide security unless of course the Police have refused to do so which is not the case. The responsibility to preserve peace or maintain law and order is vested in the Police and they do not need any direction from this Court to do so.

As regards the order for eviction, **Section 152 E, F and G of the Land Act 2012** has elaborate procedures to be followed in the process of evicting a trespasser. They should be adhered to.

Ultimately therefore and after considering the plaintiff’s Notice of Motion dated 9th May 2016, I make the following orders:

- 1. An order for eviction of the defendant from land parcel No. KIRINYAGA/GATHIGIRIRI/698.***
- 2. The said eviction be carried out in accordance with the provisions set out in the Land Act 2012.***
- 3. No order as to costs.***

B. N. OLAO

JUDGE

5TH MAY, 2017

Ruling dated, delivered and signed in open Court this 5th day of May 2017

Mr. Ngigi for Plaintiff present

Mr. Ombachi for Defendant absent.

B. N. OLAO

JUDGE

5TH MAY, 2017