



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 46 OF 2015

PROTUS HAMISI WAMBANDA.....PLAINTIFF/RESPONDENT

VERSUS

ELIZABETH SHIJEYI SHAVA.....DEFENDANT/APPLICANT

RULING

INTRODUCTION

This ruling is in respect of an application brought by way of Notice of Motion dated 24th January, 2017 by the defendant/Applicant who sought for the following orders.

- a) That this application be certified as urgent and its service be dispensed within the first instance.
- b) That the court be pleased to direct that every monthly rent due and collected from the rental premises on the suit land known as Kapsaret/Kapsaret Block 10 (Lamayuet) 11 be remitted and/or paid to the applicant for subsistence and/or and for just and fairness pending the hearing and determination of this application and eventually the main suit.
- c) That in the alternative the proceeds/rent collected or to be collected henceforth be deposited in court or in both advocates joint interest earning account and further all the due rent collected from the premises on the suit land known as Kapsaret/Kapsaret Block 10 (Lamayuet) 11 from the date of purchase of the land onwards be deposited pending the inter parties hearing and determination of this application and eventually the suit and in the alternative the plaintiff be ordered to furnish the court with security of Kshs 4,000,000/= (read Four Million) only.
- d) Costs be provided for by the defendant.

The defendant/respondent fixed this application for hearing on 30th May 2017 and served it upon the plaintiff/respondent. On the said date, the plaintiff respondent was present but the defendant/applicant was not available to prosecute the application. The matter was placed aside to 11a.m for hearing of the application.

Mr Okara Counsel for the plaintiff/Respondent urged the court to dismiss the defendant's application dated 24th January 2017. He relied on the grounds of opposition filed in court on 30th May 2017.

Counsel submitted that the burden of proof in upon the defendant to prove that the premises are rented to a 3rd party. He stated that there is no lease or tenancy agreement annexed to the application to enable the court to come to a conclusion that the premises are rented as alleged. Counsel further submitted that the

defendant has failed in terms of section 107 (1) & (2) and 108 of the Evidence Act. The court cannot be allowed to second guess in its determination.

Mr. Okara also submitted that the grounds upon which the application are premised are fatal as the defendant claims that she is the landlady at the same time claiming to have sold the property to a 3rd party. Counsel therefore urged the court to dismiss the application.

Determination

This is the defendant/applicant's application which was not prosecuted. The plaintiff/ respondent opposed the application on the grounds filed in court and Counsel's submission.

I have considered the application, the annexures, the grounds of opposition together with the submissions of Counsel for the Plaintiff/respondent who urged the court to dismiss the application. Counsel was fair enough to respond to the application by arguing for its dismissal. He stated the reasons why the court should dismiss the said application.

I am persuaded that the application lacks merit and the same is dismissed with costs to the plaintiff. I wish to state that even if the applicant argued the application I would have come to the same conclusion.

I therefore dismiss the application dated 24th January 2017 with costs to the plaintiff.

Dated and delivered at Eldoret on this 22nd day of June, 2017.

M. A ODENY

JUDGE