

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 194 OF 2017

ELIZABETH PAMELANECHESA.....PLAINTIFF/APPLICANT

VERSUS

ROSALIA ITALIA.....DEFENDANT/RESPONDENT

RULING

This application is brought under Order 39 Rule 1 of the Civil Procedure Rules 2010 and Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya seeking the following orders;

1. The instant application to be certified to e of utmost urgency and be heard ex-parte in the 1st instance.
2. The defendant/respondent be compelled by an Eviction Order of the honourable court to vacate the plaintiff's/applicant's land parcel being KAKAMEGA/SEREM/10 measuring 0.42 Hectares.
3. The O.C.S. Serem police station to provide security and ensure full compliance of the said orders.
4. The costs of this application and the main suit be borne by the respondent.

It is supported by the annexed affidavit of Elizabeth PamelaNechesa. The grounds are briefly that, the plaintiff/applicant is the absolute registered owner of land parcel number KAKAMEGA/SEREM/10 measuring 0.42 Hectares. The defendant/respondent has without any colour of rights and or justifiable excuse or reason encroached and trespassed on the plaintiff/applicant's parcel by cultivating same.The defendant/respondent is a total stranger to the plaintiff/applicant and hence has no legal rights to intermeddle with the plaintiff/applicant's parcel of land.The plaintiff/applicant stands to suffer huge irreparable losses and damages through the defendant/respondent's actions.

The applicant submitted that she is the absolute registered owner of land parcel number KAKAMEGA/SEREM/10 measuring 0.42 hectares (Annexed and marked 'CS 1' is a copy of a certificate of official search for the same).She acquired the same vide certificate of confirmation of grant issued vide Hamisi Law Courts Succession Cause Number 13 of 2015.The said parcel of land belonged to her late husband one SamuelLusichiAmakanga.That the defendant/respondent has been cultivating on the plaintiff/applicant's parcel of land.The defendant/respondent's actions amount to trespassing and/or intermeddling with the plaintiff/applicant's parcel of land.the The/applicant plaintiff has also sought legal redress vide Hamisi Law Courts Succession Cause Number 13 of 2015 brought under certificate of urgency but the defendant/respondent has continually remained defiant and evasive.The defendant/respondent's actions have forced her to seek legal redress through this honourable court for orders that she be forcefully evicted from her parcel of land.

This court has considered the plaintiff's/applicant's submissions and the supporting affidavit therein. The respondent was served and failed to attend court and the matter proceeded exparte. The applicant submitted that she is the absolute registered owner of land parcel number KAKAMEGA/SEREM/10 measuring 0.42 hectares (Annexed and marked 'CS 1' is a copy of a certificate of official search for the same). She acquired the same vide certificate of confirmation of grant issued vide Hamisi Law Courts Succession Cause Number 13 of 2015. The said parcel of land belonged to her late husband

Samuel Lusichi Amakanga. That the defendant/respondent has been cultivating on the plaintiff's/applicant's parcel of land. I find that the plaintiff/applicant's application lacks merit at this stage and the matter would need to go to full hearing in order to determine whether an eviction order would be justified. Indeed it is admitted that there is a case pending between the same parties, namely, Hamisi Law Courts Succession Cause Number 13 of 2015. I therefore dismiss this application and the costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH DAY OF SEPTEMBER 2017.

N.A. MATHEKA

JUDGE