



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1521 OF 2016

VERONICA WANGUI ACHUO.....PLAINTIFF/APPLICANT

=VERSUS=

NAOMI WANJIRU.....1ST DEFENDANT/RESPONDENT

GERALD THIONG'O KANYINGI.....2ND DEFENDANT/RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 5th December 2016, in which she seeks a mandatory order directing the respondents to vacate from land parcel *No. 107/1106/1206/1228* at Umoja II in Nairobi. The application also seeks to compel the respondents to compensate the plaintiff for trespass to the suit property.
2. The suit property had initially been allocated to the second respondent by Umoja II Jua Kali Association. The second respondent was allegedly expelled from the membership of the Association and the suit property was allocated to Peter Mwaura Ndungu who then sold it to the applicant. The applicant contends that in June 2016, the first respondent who is the wife of the second respondent went to the suit property and erected semi-permanent structures on the suit property. The respondents have persisted in their trespass despite being asked to do so by the officials of the Association.
3. The applicant's application has been opposed by the respondents through a replying affidavit sworn by the second respondent on 6th April 2017. The respondents contend that the applicant's application is an abuse of the process of the court in that the applicant has failed to disclose that the suit property has been the subject of litigation in the lower court between the said Peter Mwaura Ndungu and Umoja II Jua Kali Association which litigation is still pending. The respondents contend that one of the cases in the lower court which was against the second respondent and others was withdrawn for lack of evidence.
4. The respondents further contend that the minutes of Umoja II Jua Kali Association which the applicant is using to claim the suit property were disowned by the officials who were alleged to have signed the same. The respondents have been in possession of the suit property since 1996.
5. In a further affidavit by the applicant sworn on 25th April 2017, the applicant avers that she was informed by the officials of the Association that the pending case in the lower court was concluded.
6. The prayers which the applicant is seeking in this application are the same prayers in the Complaint. What the applicant is seeking are mandatory orders at interlocutory stage. The principles for grant of mandatory

orders at interlocutory stage were well set out in the case of **Locabail International Finance Ltd Vs Agro-Export (1988) ALL ER 901** which has been quoted with approval in a number of decisions in our courts. It was stated as follows:-

“ A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances ,and then only in clear cases either where the court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the plaintiff”.

7. In the instant case there are claims that there are pending cases in court regarding the issue of ownership of the suit property by the person who is said to have sold the property to the applicant. There was also another case which had been filed by the Association against the second respondent which case was withdrawn. There are issues on the authenticity of the minutes which held that the suit property belonged to the applicant. The applicant alleges that she was informed that the case pending in court in which the person who sold the land to her was a party had been concluded. There is no evidence to support this allegation. It is therefore clear that this is not a case which can be decided in a summary way by granting mandatory orders at interlocutory stage. I find that the applicant’s application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **18th** day of **October, 2017**.

E.O.OBAGA

JUDGE

In the presence of :

M/s Chege for Mr Adomayon for Defendant/Respondent

Court Assistant: Steve

E.O.OBAGA

JUDGE