



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 230 OF 2015**

**THERESA OJIAMBO.....PLAINTIFF**

**=VERSUS=**

**FRANCIS MWAURA IKINU.....DEFENDANT**

**RULING**

1. The plaintiff/applicant filed a Notice of Motion dated 29<sup>th</sup> March 2017, in which she sought entry of summary judgement in her favour as prayed in the Plaint. The facts leading to this application are fairly simple. The respondent was the registered owner of the suit property. The respondent had secured a facility from Standard Chartered Bank and offered the suit property as security. When he failed to repay the loan, the bank exercised its statutory powers and the property was sold in a public auction.

2. The suit property was duly registered in the applicant's name on 23<sup>rd</sup> July 2014. The applicant sought to have vacant possession but the respondent refused to move out of the suit property. The respondent instead made an offer to purchase the suit property from the applicant, which offer the applicant declined. The respondent even offered to be remitting Kshs.100,000/=monthly to the applicant pending sealing of the proposal.

3. The applicant filed the present suit seeking for eviction orders and mesne profits. The respondent filed a defence albeit out of time. The applicant then filed an application seeking to have the respondent's defence struck out and judgement entered in her favour as per the Plaint. The respondent opposed the application. In a ruling delivered on 20<sup>th</sup> January 2017 Justice Gacheru declined to strike out the defence. The respondent was ordered to provide security for costs in the sum of Kshs.3,000,000/= which was to be deposited in an interest earning account in the joint names of the advocates for the parties. This amount was to be deposited within 30 days from the date of ruling failing which the defence was to stand dismissed. The respondent was further ordered to be depositing in court Kshs.100,000/= every month as security for mesne profits.

4. The applicant contends that the respondent neither offered the Kshs.3,000,000/= for deposit as security nor did he pay kshs.100,000/= monthly as security for mesne profits as ordered. The applicant now contends that as the respondent's defence stood dismissed for non-compliance of the court's orders, she is at liberty to apply for summary judgement. The respondent who was duly served with the application for summary judgement did not file any replying affidavit. On 30<sup>th</sup> May 2017, the court gave the respondent liberty to file a response to the application and file written submissions. The matter was fixed for mention on 22<sup>nd</sup> June 2017. When the matter was called out on 22<sup>nd</sup> June 2017, the respondent's advocate was not in court and there was no replying affidavit or submissions filed as directed.

5. I have considered the applicant's application which is unopposed. There is no defence to the applicant's claim, the defence having stood dismissed after 30 days from 20<sup>th</sup> January 2017. The respondent was at liberty to demonstrate by affidavit evidence that he was entitled to defend but never did so. The suit property is registered in the name of the applicant who is losing out on rent. This fact is indeed confirmed from the respondents offer to give a monthly payment of Kshs.100,000/= pending negotiations for sale of the suit property from the applicant. This offer was declined. I find that this is a clear case where summary judgement ought to be granted. I allow the applicant's application dated 29<sup>th</sup>

March 2017, in terms of prayers 2,3,4,5 and 6.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **11<sup>th</sup>** day of **October, 2017**.

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Mitunga for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**