



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 226 OF 2017

STEPHEN KIRIMI..... APPLICANT

VERSUS

JERUSA KARIMI.....RESPONDENT

RULING

1. The Notice of Motion dated 25th July 2017 seeks the following Orders:-

a) Spent

b) THAT the Court be pleased to grant a Temporary Injunction restraining the respondent whether Herself, her agents and / or servants from in any way dealing, alienating, evicting or otherwise interfering with the Applicant's quite possession and occupation of the suit land measuring 1 Acre at Wabera Ward Mwangaza Area within Isiolo, pending determination of this application and suit or further Orders of the Court.

c) THAT this Honourable Court be pleased to issue an order of eviction against the respondent from the suit land.

d) THAT this Honourable Court be pleased to issue an order directing the O.C.S Isiolo Police Station to help in the enforcement of this Honourable Court's orders.

e) THAT the costs of this application be provided for.

2. The application is based on the following grounds:-

i) THAT the applicant is the rightful and bona-fide owner of all that parcel of land measuring 1 acre at Wabera Ward Mwangaza area within Isiolo.

ii) THAT applicant has been living and indeed developed the suit land which he depends on for his livelihood since he bought the same in 1999 from one JULIUS MAYIKETHE.

iii) THAT the respondent herein has all over sudden visited on the Applicant untold violence through her proxies and eventually encroached on the suit and started to construct structures thereon.

iv) THAT the respondent has continuously shown all intention to irregularly evict the applicant and unless restrained, will cause irreparable loss and damage to the applicant and his well being.

v) THAT the respondent intends, unless restrained by this Honourable Court to continue with her unlawful acts against the Applicants which include harassing, intimidating, threatening, provoking, inciting, trailing and otherwise howsoever interfering with the peaceful occupation and user of his land.

3. The applicant has also filed a supporting affidavit sworn on 25th July 2017 in support of his application.

i) The Response of the defendant is captured in her Replying Affidavit sworn on 11th September 2017. She avers that plaintiff is a stranger to Wabera Ward of Mwangaza Area, where she has lived for over 40 years together with her family.

ii) Defendant further states that in or about the year 2011 when the now defunct County Council of Isiolo wanted to evict them from Mwangaza Area, they went to Court as residents of Mwangaza Isiolo and the plaintiff was not among the petitioners who are over 300 in Meru High Court Petition No. 6 of 2011.

iii) Defendant further states that plaintiff has never lived on the disputed land, and has not annexed any document to show how he acquired the land.

iv) Defendant contends that plaintiff is not sincere and this application is meant to have her evicted from the land. She also states that there is an order of status quo covering Mwangaza Area and therefore, plaintiff should respect the same until Petition No. 6 of 2011 is finalized.

4. When the application came up for hearing on 18.10.17, the Respondent was absent including her counsel. After confirmation that service had been effected, the court proceeded to give a date for ruling.

5. I have weighed all the issues raised herein. Applicant / Plaintiff is seeking protection of his rights and interest in the suit land. The question is, which is the suit land? What is the nature and extent of the rights and interest thereof?

6. Neither the pleadings nor the application contain information on the identity of the suit land. Reference is only made to the acreage of the land in a certain area to wit one acre at Wabera Ward, Mwangaza Area within Isiolo.

7. It is also noted that the plaintiff has not availed even one single document regarding his ownership or claim to the land, any land!

8. Annexures SK1 and 2 are receipts while annexure 3 and 6 are OB reports.

Annexure SK4 is a letter from the Applicant's advocates, while annexure 5 are photographs of an iron sheet structure.

9. It has also not come out clearly as to whether the Applicant has been in occupation of the suit land. The photographs (SK5) do not support occupation.

10. The right to property is anchored under article 40 of The Constitution.

“every person has the right either individually or in association with others to acquire and own property”

The law is hence in place to protect rights and interest that are capable of being protected.

11. A claimant is therefore required to state the right and or interest that he possesses so that the same can be protected by the court. The plaintiff has not been able to state with certainty as what are his rights and interest since even the suit land itself has also not been identified.

12. Another aspect of this application is that the Applicant's prayers are for eviction orders. This prayer is in the realm of a mandatory injunction.

13. In the case of **Mahe Unissa Karim vs. Edward Oluoch Odumbe H.C.C.C No.91 of 2015 Nairobi, Aburili J** was dealing with a case of a mandatory injunction at the interlocutory stage. She stated thus;

“The test for granting a mandatory injunction is different from that enunciated in the Giella vs Casman Brown case which is the locus classicus case for prohibitory injunctions. The threshold in mandatory injunctions is higher than in the case of prohibitory injunctions and the Court of Appeal in the case of Kenya Breweries Ltd vs Washington Okeyo (2002) EA 109 had occasion to discuss and consider the principles that govern the grant of mandatory injunctions. The Court of Appeal held that the test for grant of a mandatory injunction was as correctly stated in VOL 24 of Halsbury's Laws of England 4th Edition paragraph 948 that:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory”.

14. In the present case, plaintiff's claim is neither simple nor summary in nature. The order of eviction at this stage is therefore not meritorious.

15. The upshot of my findings are that the application dated 25/7/2017 is not meritorious, the same is dismissed with no orders as to costs.

DELIVERED, DATED AND SIGNED AT MERU THIS 15TH DAY OF NOVEMBER, 2017 IN THE PRESENCE OF:-

C:A Janet/Haway

Ashaba for the Plaintiff present

Kitheka H/B for Ondieki for Respondent present

Hon. L. N. MBUGUA

ELC JUDGE