



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 36 OF 2015

LOMOLO (1962) LTDPLAINTIFF

VERSUS

SHADRACK KIMSE & 147 OTHERS.....DEFENDANTS

RULING

(Application for eviction; judgment entered for the plaintiff and defendants given time to vacate; defendants not doing so hence the application; application for eviction allowed; police directed to provide security)

1. The application before me is that dated 14 April 2016 filed by the plaintiff. It principally seeks orders that the applicant be allowed to evict the defendants from the land parcel L.R No. 10939 and the OCS Menengai Police Station to provide security.

2. In this suit, the plaintiff had in its plaint sought orders of eviction of the defendants from the suit land. An application for summary judgment dated 3 December 2015 was filed by the plaintiff and allowed vide my ruling of 17 March 2016. In that ruling, I gave the defendants 14 days to vacate the suit land. In this application, it is averred that despite being served with the order asking them to vacate, the defendants are still on the suit land. It is for that reason that the plaintiff is now asking to be allowed to evict the defendants and for security from the Police Service.

3. No replying affidavit nor Grounds of Opposition were filed to oppose this application. At the hearing of the same, Mr. Katithi for the respondents asked me to adjourn the matter because they had preferred an appeal against my decision allowing the application for summary judgment, and a ruling was due to be delivered on 29 July 2016. It was clarified by Mr. Githui for the applicant, and indeed confirmed by Mr. Katithi, that what actually is pending before the Court of Appeal is an application for stay pending appeal. I was informed by Mr. Githui, and it was not denied by Mr. Katithi, that the Court of Appeal have not issued any stay of proceedings. Given that there was no stay issued, I did not see any merit in the application for adjournment and ordered the matter to proceed.

4. Mr. Githui urged me to allow the application. Mr. Katithi inter alia responded by saying that it is a community that is sought to be evicted and they ask to be allowed enough time to seek alternative property.

5. I have considered the matter. What the applicant wants is to be permitted to be allowed to evict the defendants. There is already a decree for vacant possession in favour of the plaintiff. There was issued an order giving the defendants time to vacate. They have not done so. I really do not see on what ground I

can deny the application by the plaintiff to be permitted to evict the defendants. I therefore allow the application. The plaintiff is at liberty to proceed to evict the defendants. I direct the plaintiff to appoint a licenced court broker/auctioneer to conduct the eviction exercise. I further order the OCS Menengai Police Station to provide adequate security to the court broker/auctioneer while he/she and/or his/her servants/agents conduct the eviction exercise.

6. The plaintiff shall also have the costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of July, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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In presence of :

Ms. Chepngetich holding brief for Mr. Githui for applicant

Mr. Katithi for respondents

Court Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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