

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L. CASE NO. 691 OF 2012

KIPLAGAT KOTUTPLAINTIFF

VERSUS

ROSE JEBOR KIPNGOK 1ST RESPONDENT

LAND REGISTRAR,UASIN GISHU COUNTY ...2ND RESPONDENT

R U L I N G

Rose Jebor Kipngok (*hereinafter referred to as the decree holder*) has filed an application for an order of sequestration to attach the Judgment debtors property known as Kiplombe/Kiplombe Block10 (Growel)/ 607 deposited in court as security and the same be sold through public Auction to defray the loss of use of suit property occasioned during pendency of Eldoret Civil Appeal No.31 of 2015.

The decree holder prays further that the Judgment delivered on 27.11.2014 and the decree dated with an even date be implemented by the O.C.S. Eldoret East Police Station and the said eviction exercise be supervised by the O.C.P.D. Eldoret East Division and the County Commissioner of Uasin Gishu County and permanent structures erected on the suit property be demolished. The application is based on ground that the plaintiff instituted this suit seeking for specific performance and a vesting order in his favour. The suit proceeded to full hearing with the participation of the plaintiff and the defendant and judgment was pronounced on 27th November, 2014 whereupon the Honourable Court dismissed the plaintiff's claim. That the plaintiff was granted 30 days from the date of the Judgment to vacate the suit land. The judgment debtor lodged an appeal in the Court of Appeal against the Judgment of this Honourable Court vide Eldoret Civil Appeal No.31 of 2015 which was dismissed with costs to the decree holder/applicant upon hearing vide judgment dated 14th June, 2016.

The respondent has blatantly refused and disobeyed to vacate from the suit land despite being served with the judgment and final decree of this Honourable Court and notwithstanding the dismissal of his appeal. The Honourable Court ordered the judgment debtor/respondent vide ruling dated 20th November, 2015 to furnish security whose value it at least 1,600,000 as conditional stay of execution of the judgment and decree of this Honourable Court pending the hearing and determination of the aforesaid appeal.

The application is supported by the affidavit of Rose Jebor Kipngok who states that the respondent has blatantly refused and disobeyed to vacate from the suit land despite being served with the judgment and final decree of this Honourable Court and being aware of the dismissal of his appeal. The Honourable Court ordered the judgment debtor/respondent vide ruling dated 20th November, 2015 to furnish security whose value is at least 1,600,00 as conditional stay of execution of the judgment and decree of this Honourable Court pending the hearing and determination of the aforesaid appeal to cushion me for loss of use. The judgment debtor continues to deprive her access and use of the suit property and in the process denying him the right to enjoy the fruits of the judgment. That the respondent has refused in absolute disobedience to vacate from the suit land and hence necessitating the filing of this application. That as a result of the adamant refusal and errant behavior of the respondent she had not been able to enjoy the fruits of the said judgment. That she now prays for an eviction and sequestration orders against the respondent to enable her actualize the judgment and decree of this honourable court and defray the damages occasioned during the pendency of the said appeal. That the eviction exercise be implemented by the OCS Eldoret East Police Station and be supervised by the OCPD Eldoret East Police Division.

On his part the judgment debtor, decree holder filed an application seeking orders that the decree holder and Land Registrar Uasin Gishu be committed to civil jail for a period of 2 years and or in lieu thereof be ordered to pay Kshs.20, 000,000. The application is premised on the affidavit of Kiplagat Kotut who states that on 23.1.2015 the court issued an interim order of stay of execution of judgment and decree of the honourable court delivered on 27.11.2014 which orders were confirmed in a ruling that was delivered on 20.11.2015. That he was advised by his advocates that orders made on 23.1.2015 was served upon the 1st Respondent. That he was further advised by his advocates which advise he verily belief to be true and he forwarded the order to the County Land Registrar and upon payment of the requisite amount of Kshs.500/= the order was registered against the register of the suit property. That paragraph 3 of the court order clearly stated that the respondent had been restrained from transferring and or offering the sale of the suit property. That he was further counseled by his lawyer that the ruling delivered on 20.11.2015 confirmed the orders which ruling was delivered in the presence of the respondent and her advocates. That in the said ruling the court ordered for stay of judgment and decree of the honourable court until hearing and determination of the appeal. That the Court of Appeal delivered its judgment on 14.6.2016. That from an official search dated 5.7.2016 he has since gathered that the respondent transferred the suit property on 4.4.2016 which was contrary to this honourable court's order prohibiting the respondent from effecting transfer until the appeal is heard and determined. That it is therefore clear that the respondent transferred the suit property during the pendency of the appeal and as such the respondents are in breach of the said orders and thus in contempt of court. The decree holder filed the grounds of opposition whose import is that the application for contempt is frivolous and lacks substance and is calculated in scuttling the eviction. The decree holder states that the application for eviction of the judgment debtor was dismissed and therefore exposed the judgment debtor moreover that interim orders lapsed once the Court of Appeal dismissed the Appeal. Lastly that the court orders were not served. The 2nd Respondent on her part inter alia states that her office has never been a party to the proceedings and that she acted in good faith pursuant to a court order.

In a further affidavit filed on 26.7.2016 the judgment debtor states that the orders of stay were made on condition that the judgment debtor deposit a surety of 1.6 million. His advocate made an application to review the surety on 16.12.2015 which application was dismissed and surety was to be deposited On or before 30.12.2015.

I will deal with the application for contempt first and do find that the orders issued on 12.1.2015 were served upon the 1st respondent. The status quo was maintained until the 20.11.2015 when the court granted the orders of stay pending hearing of the appeal. The order made on 20.11.2015 further required the judgment debtor to deposit security within 30 days but the same was not complied with. There is no order made or issued on 4/4/2016 annexed to the application and I do not see the same in the proceedings. I do find that the judgment debtor has not proved that the Respondents are in breach of any court order for committal to Civil jail. Moreover, I do find that litigation has come to an end in this matter and therefore I do order that the judgment debtor to vacate the premises within 30 days failure of which he be forcefully evicted as there is no other matter pending in this suit. I do decline to grant the order of sequestration until the loss assessed by this court and costs are assessed by the Deputy Registrar of the High Court on condition that the applicant furnished security is retained in court until the assessment of the loss incurred by the defendant when the appeal was pending.

Dated and Delivered at Eldoret this 8th Day of December 2016

ANTONY OMBWAYO

JUDGE