

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 1034 OF 2012

RACHEAL MUKAMI NGUGIPLAINTIFF

VERSUS

MERCY WANJIRU THOGO..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 19th December 2012 in which the Plaintiff/Applicant sought for the following orders:

1. Spent.
2. That the Honourable Court do issue an order of eviction against the Defendant/Respondent ordering her eviction from all that property known as Limuru/Kamirithu/625 (hereinafter referred to as the "suit property") pending the hearing and determination of this Application.
3. That the Honourable Court do issue an order of eviction against the Defendant/Respondent ordering her eviction from the suit property pending the hearing and determination of this suit.
4. That the OCS Tigoni Police Station do provide security in the enforcement of the orders above.
5. That costs of this Application be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff Racheal Mukami Ngugi sworn on 19th December 2012 in which she averred that she is the registered owner and exclusive proprietor of the suit property situate at Kamandura within Limuru District in Kiambu County. In support of that statement, she produced a copy of her title deed and certificate of official search. She then stated that the Defendant/Respondent is a trespasser in occupation of the suit property without her consent or approval. She further averred that the suit property was previously registered in the name of Salome Wambui Ngugi and that the Defendant/Respondent occupied the suit property as her licensee. She further disclosed that the Defendant/Respondent sued the said former owner of the suit property Salome Wambui Ngugi in **Limuru SPMCC No. 349 of 2011** which delivered orders or verdict adverse to the Defendant/Respondent. She indicated that the Defendant/Respondent did not appeal against the said court verdict and that the suit property subsequently changed ownership from the said Salome Wambui Ngugi to her. She further stated that as the registered owner of the suit property, she was entitled to occupy it exclusively and that as the Defendant/Respondent owns no proprietary rights over the suit property, she should give her vacant possession of the same.

The Application is contested. The Defendant/Respondent, Mercy Wanjiru Thogo, filed her Replying Affidavit sworn on 20th February 2013 in which she averred that the Plaintiff/Applicant is her sister-in-law owing to the fact that she was the widow of the late brother of the Plaintiff/Applicant. She further averred that she together with her deceased husband lived on the suit property and that after his death, she continued to live on the suit property. She further confirmed the Plaintiff/Applicant's statement that the suit property was formerly in the name of Salome Wambui Ngugi who was her mother-in-law and the mother of the Plaintiff/Applicant. She further disclosed that the suit property changed hands from the said Salome Wambui Ngugi to the Plaintiff/Applicant on 20th September 2012. She further averred that both

the Plaintiff/Applicant and her said mother-in-law have always wanted to evict her from the homestead after the death of her husband. She further stated that to protect her interest in the suit property, she lodged a caution against the title on 26th July 2011 and again on 9th December 2011, both of which were disregarded and the suit property transferred to the Plaintiff/Applicant. On that basis, she termed that transfer as fraudulent and illegal and further stated that no consideration was paid. She further contended that the dispute in **Limuru SPMCC No. 349 of 2011** was concerning the harassment of the Defendant/Respondent by her mother in law and not proprietorship of the suit property.

The Defendant/Respondent filed her written submissions in which she contended that the orders sought by the Plaintiff/Applicant can only be granted after the full hearing of the suit and cannot be granted at an interlocutory stage as doing so would deny the Defendant/Respondent the opportunity of being heard and would permanently deprive her of her proprietary interest in the suit property.

I have looked at the Plaint dated 19th December 2012. The prayers contained therein are identical to the prayers in this Application, namely an order of eviction, costs of the suit and any other relief that this court deems fit. It is clear to me that the orders being sought by the Plaintiff/Applicant are orders which are final in nature and which cannot be issued at this interlocutory stage of the proceedings.

On that point, I do agree with the Defendant/Respondent's submissions. Accordingly, I hereby dismiss this Application. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 27TH DAY OF JUNE 2014.

MARY M. GITUMBI

JUDGE