

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 22 OF 2014

HARJINDER SINGH PLAHA PLAINTIFF

VS

SURJIT SINGH DHIAN DEFENDANT

RULING

This suit was instituted vide a plaint filed on 28 January 2014. The case of the plaintiff is that he has been a tenant of the defendant for over 15 years in the land parcel Eldoret Municipality Block 14/210 which is owned by the defendant. He has averred that the defendant has issued him with notices to vacate which notices are stated to be illegal. It is further averred that the defendant has threatened to violently evict the plaintiff. In the suit the plaintiff has sought orders to permanently restrain the defendant from evicting him.

Together with the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendant from evicting him from the suit premises pending hearing and determination of the suit. In the supporting affidavit, he has averred that he has been paying rent dutifully, that he is not in rent arrears, and that he is not in breach of any term of the oral lease between himself and the defendant. Despite this, the defendant has through his advocates, written various notices asking him to vacate. These notices are dated 20 September 2013, 23 October 2013, 3 December 2013. The latter demanded that he vacates the suit land by 10 December 2013. On 25 January 2014, the defendant through a firm known as Mutei Merchants Company Limited placed a poster at the gate of the compound demanding that the plaintiff vacates within 7 days. It is further averred that Mutei Merchants placed a guard at the gate to stop the plaintiff from accessing the premises. All these the plaintiff asserts is illegal. The plaintiff has further contended that the defendant has colluded with the County Government of Uasin Gishu to demand that he vacates the premises due to public health concerns.

The defendant entered appearance but has filed no defence nor any response to the subject application. The material before me is therefore only that tabled by the plaintiff.

As earlier stated the plaintiff has averred that he is a lawful tenant on the premises. The tenancy between the two parties is said to be oral and the premises is residential. The plaintiff has stated that since he has not breached any terms of the tenancy, the defendant has no right to evict him from the premises without an order of court. In absence of any material coming from the defendant to contradict the averments of the plaintiff, I have no reason to doubt what the plaintiff is saying. The rent payable was not disclosed, but I am assuming that it is of such an amount as not to render the premises to be within the ambit of the Rent Restriction Act and that the tenancy is not a controlled tenancy.

I do not think that it is proper for any landlord to engage the law of the jungle and forcefully evict any tenant. A landlord needs to give proper notice to vacate and if the notice is ignored, he needs to engage the proper court for an order of eviction. I am therefore of the view that the plaintiff has laid out a prima facie case with a probability of success. I now issue an order stopping the defendant or his servants/agents from evicting the plaintiff from the land parcel Eldoret Municipality Block 14/210 pending hearing of this suit. This however is subject to the plaintiff paying the current rent to the defendant. The defendant shall of course have an opportunity to demonstrate that his actions are legal at the hearing of the main suit. The costs of the application shall be costs in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF SEPTEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

E.M. Momanyi for plaintiff/applicant.

N/A for M/s Arap Mitei for defendant/respondent.