



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. E730 OF 2021**

**FREDRICK OGOLLA ODERA.....CLAIMANT**

**VERSUS**

**THE PRINCIPAL, UPPER HILL SCHOOL.....1<sup>ST</sup> RESPONDENT**

**THE BOARD OF MANAGEMENT OF UPPER HILL SCHOOL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Respondent/Applicant filed application dated 27<sup>th</sup> January, 2022 seeking an order in the following terms:

**(a) Spent.**

**(b) That the Court be pleased to direct the claimant to comply with the notice issued on 23<sup>rd</sup> November, 2021 and surrender the premises to be demolished for purposes of constructing 3 additional classrooms pending the hearing and determination of the main suit and the application dated 7<sup>th</sup> September, 2021.**

**(c) Costs.**

2. The application is premised on grounds set out on the face of the application the nub of which is that a notice to vacate was issued to all staff members occupying the houses in the school compound requiring them to exit for purposes of building additional classrooms.

3. That all other staff members have vacated except the claimant whose house is currently standing in the intended construction site.

4. That the respondents are willing to find the claimant an alternative house for rent near the school at the expense of the Respondent.

5. That initial houses have been condemned by the department of health. That it is proper that same be removed to pave way for new planning.

6. The application is opposed vide a replying affidavit sworn to by the claimant on 4<sup>th</sup> July, 2020 stating that he understands the need to build new classrooms but he is not being handled fairly by the respondent, since all staff in the intended site were relocated to the new building except the claimant.

7. That respondent disconnected water and electricity supplies to the claimant's staff house to make it unbearable for the claimant to remain therein in disobedience of the interim orders of the Court.

8. That the respondent has never served the claimant with any notice to vacate nor offered the claimant any alternative place to relocate to.

9. That the application lacks merit and it be dismissed with costs.

**Determination**

10. The respondent did not file any supplementary affidavit denying the deposition by the claimant in the replying affidavit.

11. The claimant is enjoying interim orders issued by this Court on 9<sup>th</sup> September, 2021 which entitles the claimant to remain in the stated staff house pending the hearing and determination of the suit.

12. It is upon the respondent, if they so desire to provide alternative staff housing to the claimant if indeed they wish to construct classrooms where the current staff houses are.

13. The applicants have not made out a *prima facie* case entitling them to mandatory orders of eviction whilst they have not provided alternative residence to the claimant.

14. The applicants who have disconnected utilities to the present house the claimant is living to defeat the interim Court orders have no clean hands and are not entitled to the orders sought.

15. The respondents are however at liberty to relocate the claimant to an alternative, appropriate house, until the suit herein is heard and determined and/or the dispute between the parties is otherwise resolved by the parties.

16. Application is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 17<sup>TH</sup> DAY OF MARCH, 2022**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Mr. Ajulu with Mr. Wanjama for Respondent/Applicant

M/s Thungu for claimant/Respondent

Ekale – Court clerk.