



**Duckworth v Duckworth & 4 others (Commercial Suit 485 of 2017)
[2024] KEHC 865 (KLR) (Commercial and Tax) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT 485 OF 2017
A MABEYA, J
JANUARY 30, 2024**

BETWEEN

JULIET KRISTEN P. DUCKWORTH PLAINTIFF

AND

MICHAEL JOHN STANHOPE DUCKWORTH 1ST DEFENDANT

GEOHUT LIMITED 2ND DEFENDANT

I&M BANK LIMITED 3RD DEFENDANT

IDAH GATWIRI MARANGU 4TH DEFENDANT

DANIEL MUE PETER 5TH DEFENDANT

RULING

1. Before Court is the application dated 20/3/2023 brought under Order 51 rule 1 of the [Civil Procedure Rules](#) 2010, section 3A of the [Civil Procedure Act](#). It seeks eviction orders against the plaintiff pursuant to the ruling delivered on 28/10/2022 from the parcel of land known as Ngong/Ngong 37632 (“the suit property”). That the OCS Rongai Police Station be ordered to supervise the eviction.
2. In support of the application, the applicant relied on the grounds on the face of it and the supporting affidavit of Idah Gatwiri Marangu sworn on 20/3/2023. It was averred that the 4th and 5th defendant jointly purchased the suit property at a public auction on 25/8/2020 and transferred to them on 21/5/2021. That they had been unable to take possession of the said property for two years since the purchase.
3. That the 4th and 5th defendant were running losses in monthly rent as they have to seek accommodation elsewhere despite being the rightful owners of the suit property. That in its ruling of 28/10/2022, the



Court dismissed the plaintiff's prayer for an injunction and therefore the applicants have the right to use the suit property.

4. The application was opposed by the plaintiff vide grounds of opposition dated 22/5/2023. The plaintiff averred that the application was incurable defective as the Court did not have jurisdiction to grant the orders sought as the same was under the jurisdiction of the *Environment and Land Court Act*, 2011.
5. The parties filed their respective submissions which I have considered. The applicants submitted that the plaintiff's refusal to vacate the property was a violation of their rights to property. That any dispute concerning the chargee and chargor with respect to the validity of sale did not affect the applicants. That the applicants were bonafide purchasers for value thus protected by the law and that the plaintiff was not protected by any injunctive orders.
6. The plaintiff submitted that eviction was regulated by the land legislation and the Environment and Land Court had the jurisdiction to hear and determine the issue of eviction.
7. I have considered the pleadings and the submissions on record. The applicants have moved the Court seeking to have the plaintiff evicted from the suit property. The plaintiff was the registered owner of the suit property. She offered the same as security for financial security offered to her by the bank. Upon default, the property was sold to the 4th and 5th defendant. In its ruling dated 28/10/2022, the Court held that the property had passed title and that therefore, the applicants were protected from an irregular sale and that the plaintiff's remedy, if any, lied in damages.
8. In her submissions, the respondent challenges the jurisdiction of this Court stating that the matters occupation and eviction from immoveable property are the preserve of the Environment and Land Court. It is the respondent's case that on the foregoing, the applicants ought to have sought eviction orders from the Environment and Land Court.
9. I have looked at the ruling of this Court of 28/10/2022 on which the current application is pegged on. In that ruling, the Court made several orders. One of them was to join the 4th and 5th defendant. The Court directed that they file and serve their defence to the suit within 14 days. I have looked in the CTS and found that as at the date of writing this ruling, no defence had been filed.
10. That being the case, although the 4th and 5th defendants are already parties, on what pleading is the current application based on? Nothing! On what basis would the Court make an eviction order when there is neither a denial of the plaintiff's claim nor a any substantive prayer to that effect. I don't think the order sought can validly issue.
11. On that ground alone, I find the application to be without merit and dismiss the same with costs. I see no reason to address the issue of jurisdiction.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY, 2024.

A. MABEYA, FCI Arb

JUDGE

