



IGI Holdings Limited v Tropical Farm Management Kenya Limited & another (Environment & Land Case 679 of 2012) [2023] KEELC 890 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELC 890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 679 OF 2012
LN MBUGUA, J
FEBRUARY 16, 2023**

BETWEEN

IGI HOLDINGS LIMITED PLAINTIFF

AND

TROPICAL FARM MANAGEMENT KENYA LIMITED 1ST DEFENDANT

FREDRICK KIRUBI 2ND DEFENDANT

RULING

1. The plaintiff instituted this suit by a plaint dated September 20, 2012. It sought an eviction order against the 2nd defendant who was in occupation of its farmhouse on LR No 13093 Thika. The plaintiff had leased the suit property to the 1st defendant who in turn sublet the farmhouse to the 2nd defendant. The 2nd defendant continued with occupation after the 1st defendant's lease had determined, prompting the plaintiff to file this suit.
2. When this matter came up for hearing on January 18, 2023, counsel for the plaintiff informed the court that the matter was a formal proof as per this court's ruling of April 10, 2013. Counsel for the 1st defendant protested, arguing that the 1st defendant has an amended statement of defence dated July 31, 2019 while the 2nd defendant's counsel contended that they had a defence dated November 22, 2012.
3. The issue for determination is whether the suit is proceeding as a defended or an undefended claim.
4. A perusal of the record indicates that the 2 statements of defense filed by the defendants are indeed on record. However, In this court's ruling of March 10, 2013, Mutungi J stated as follows at page 13 and 14 of the ruling;

“As to whether the 2nd defendant has put forth a case that should entitle the court to grant him leave to defend the suit, I answer in the negative...In the premises, I hold that the plaintiff is in order to seek recovery of its premises under summary procedure pursuant to the provisions



of order 36 rule 1 (1) (b) and I do not consider that the 2nd defendant can have any defence to the plaintiff's claim being a trespasser in the premises as I have held I am constrained to enter judgement against the 2nd defendant which I hereby do and as the plaintiff has a claim for mesne profits and damages, the plaintiff will be at liberty to set the suit down for formal proof for assessment of mesne profits.”

5. The record indicates that on August 13, 2015, the deputy registrar of this court allowed the plaintiff to amend its plaint. Consequently, the plaintiff filed the amended plaint dated April 26, 2019 where he added the particulars on the claim of mesne profits to the tune of Kshs 1, 846356.

6. Clearly, there is summary judgment against the 2nd defendant which has never been set aside by way of an appeal or review. The said judgment was entered on the basis of the pleadings which had so far been filed as at April 10, 2013. Faced with a familiar issue, the Court stated as follows in *Rosaline Mary Kabumbu v National Bank of Kenya Ltd [2014] eKLR*,

“...I believe that the learned Judge properly directed herself and was well aware that the defence had been struck out previously by Mbaluto, J and as confirmed by Njagi, J. The “full hearing” therefore, would mean that the case would proceed to formal proof, for the same to be determined on its merits.”

7. It follows that the matter shall proceed as an undefended claim in so far as the case relates to the 2nd defendant, while the case will proceed as a defended claim against the 1st defendant. Any pleadings filed after April 10, 2013 shall only apply to the 1st defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N MBUGUA

JUDGE

In the presence of:-

M/s Muya holding brief for Mr Kuria for the plaintiff

Wachuka holding brief for Ndungu for 2nd defendant

Muemi for the 1st defendant

Court assistant: Eddel

