



**Marindany v Mosonik; Onsongo (Applicant) (Environment & Land Case 595 of 2016) [2023] KEELC 16922 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16922 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 595 OF 2016  
FM NJOROGE, J  
APRIL 25, 2023**

**BETWEEN**

**JOHNSTONE KIMUTAI MARINDANY ..... PLAINTIFF**

**AND**

**EMILY MOSONIK ..... DEFENDANT**

**AND**

**HEZRON GETUMA ONSONGO ..... APPLICANT**

**RULING**

1. This ruling is in respect of the plaintiff's Notice of Motion application dated January 27, 2023 brought under Rule 9(1) and (2) of the *Auctioneers (Amendment) Rules 2009*, Section 3A of the *Civil Procedure Act* which sought the following orders:
  - a. That this honorable court be pleased to issue orders of eviction of the defendant herein Emily Mosonik and/or her representatives and or any of her authorized agents from all that parcel of land namely Nakuru/Saino Settlement Scheme/2371.
  - b. That this honorable court be pleased to order the Officer Commanding Kuresoi Police Station and or any other police station to authorize his police officers to escort Hegeons Auctioneers to land parcel number Nakuru/Saino Settlement Scheme/2371 for purposes of maintaining law and order during the carrying out of the exercise of eviction.
  - c. That costs of the instant application be provided for.
2. The application is supported by the supporting affidavit of Hezron Getuma Onsongo. The grounds on the face of the application and the supporting affidavit are that the ex parte applicant is a "Class B" licensed auctioneer trading in the name and style of Hegeons Auctioneers; that on January 25, 2023 he received instructions from the firm of Kipkoech Terer & Co Advocates; that the instructions included



the eviction of the defendant from Land Parcel No Nakuru/Saino Settlement Scheme/2371; that the defendant and her representatives have been blocking him from gaining access to the suit property; that the judgement and decree herein gave the defendant the period within which she was to vacate the property; that he is informed that there is no further stay of execution of the orders of eviction and that he requires the assistance of the police officers from Kuresoi Police Station to conduct the eviction.

3. The defendant filed a replying affidavit sworn on March 20, 2023 on the same day. She deposed that there being a decree in the matter, the applicant must demonstrate that she has been served with the decree; that she has never been served with the decree and neither have the terms of the said judgement been communicated to her; that the presiding judge in this matter was transferred to Kakamega and when the judgement was delivered, she was not informed; that she has instructed her advocates on record to appeal against the said judgment; that the applicant's auctioneers license is expired and so the application should be dismissed.

### **Submissions**

4. The plaintiff filed his submissions dated March 10, 2023 on the same date while the defendant did not file any submissions. The plaintiff relied on the case of [\*David Kipkosgei Kimeli v Titus Barmasai \[2016\] eKLR\*](#) and submitted that the defendant had failed to vacate the suit property despite the judgement delivered by the court on February 28, 2022 and therefore sought that his application be allowed.

### **Analysis and determination**

5. After considering the application, replying affidavit and the submissions, the only issue that arises for determination is whether the plaintiff is entitled to the prayers sought in his application.
6. The plaintiff is seeking for an order that the defendant be evicted from land parcel No Nakuru/Saino Settlement Scheme/2371 and for the OCS Kuresoi Police Station to authorize his police officers to escort Hegeons Auctioneers to the suit property for purposes of maintaining law and order during the exercise of eviction.
7. The defendant on the other hand opposed the said application on the grounds that she has never been served with the decree in the matter and that she had instructed her advocates on record to file an appeal against the said judgement.
8. A perusal of the court record indicates that judgement in the matter was delivered on February 28, 2022. The court in its judgment ordered the defendant to vacate land parcel No Nakuru/Saino Settlement Scheme/2371 within six months of the delivery of the judgment failure to which the court would give an eviction order. Annexed to the plaintiff's application is an affidavit of service sworn by Hebron Odhiambo Omolo on October 17, 2022 indicating that the defendant had been served with the judgement. Since judgment in the matter was delivered on February 28, 2022, the defendant had six months to vacate the suit property. The six months' period lapsed on August 28, 2022. It is now past the said six months and the defendant is still in possession of the suit property. The defendant has also indicated that she has instructed her advocates on record to appeal the said judgement and has annexed a draft application seeking for leave to appeal out of time. Only an order of stay of execution would have deterred this court from granting the instant application. There is none exhibited by the defendant. There is no evidence of any pending appeal either. That being the case there is no reason why this court should not issue an order that would enable the execution of judgment as sought by the applicant.
9. It is my view that in this matter, the plaintiff is entitled to enjoy the fruits of his judgment and the application dated January 27, 2023 is therefore allowed as prayed.



**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup>  
DAY OF APRIL 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

