



Monyenche v Nyamboga & 2 others (Environment & Land Case 35 of 2021) [2023] KEELC 17836 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17836 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 35 OF 2021**

JM KAMAU, J

MAY 31, 2023

BETWEEN

JOHN NYANG'AU MONYENCHE PLAINTIFF

AND

NYAMUSI NYAMBOGA 1ST DEFENDANT

NACKSON ONYANCHA MOMANYI 2ND DEFENDANT

PERIS KEMUNTO MONYENYE 3RD DEFENDANT

RULING

1. In the Application dated February 13, 2023, the Plaintiff has sought for an order of provision of security by the Officer Commanding Nyamira Police Station and Nyamatoki Police Post to the Plaintiff/Applicant to enable him evict the Defendants from the suit land No LR West Mugirango/Bomanono/1135 granted way back on July 5, 2022 which the Defendants have failed to obey in spite of notice given to them. He claims the Defendants have resisted eviction and have instead threatened violence. For the Judgment of the court to be enforced it has become imperative that the police be involved. To oppose this Application, the Defendants filed Grounds of opposition on March 21, 2023 arguing that they have filed an Application for Review of the Judgment and that therefore the order for eviction is under Review and if the order in this Application is allowed the Defendants' Application will be rendered useless. They argued that their aforesaid Application should therefore be heard first whose outcome will determine the Plaintiff's Application. I asked both counsel to file written submissions on both Applications to be heard simultaneously. A separate Ruling on the Application for Review dated February 13, 2023 has been delivered.
2. The Judgment Debtors have been given sufficient time and Notice to vacate the suit property and all the avenues sought by them to remain on the land have reached a dead end. There are no stay orders



and the 1st Defendant's Application for Review having been rejected by this court, the 2 have no option but to vacate the suit premises.

3. Under Order 22, Rule 29 (1) of the [Civil Procedure Rules](#),

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

4. I wish to bring to the attention of the Decree Holder herein that an Order of Eviction must be carried out in accordance with the Constitution and the law both of which require that the dignity of the Evictee must be protected. He must be treated in a humane manner.

5. Under Article 28 of the [Constitution of Kenya, 2010](#),

“Every person has inherent dignity and the right to have that dignity respected and protected.”

6. Under Article 19(2) of the [Constitution of Kenya, 2010](#), on Rights and fundamental freedoms,

“The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.”

7. Under Article 20 of the [Constitution of Kenya 2010](#),

“In interpreting the Bill of Rights, a court, tribunal or other authority shall promote;

- a. the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

8. And under Article 29 of the [Constitution of Kenya 2010](#),

“Every person has the right to freedom and security of the person, which includes the right not to be;

- (f) treated or punished in a cruel, inhuman or degrading manner.”

9. Order 22, Rule 29 (1) of the [Civil Procedure Rules](#) being a subsidiary legislation is however subject to Section 152G of the [Land Act](#). And whereas Section 152A of the [Land Act](#) No. 6 of 2012 as amended vide the Land Laws (amendment) Act No. 28 of 2016 provides that a person shall not unlawfully occupy private, community or public land, I wish to caution the Decree Holder that the eviction has to be conducted in a civil and humane manner as laid down in the [Constitution of Kenya, 2010](#), and the [Land Act](#) as amended vide Act No. 28 of 2016. Section 152B of the [Land Act](#), No. 6 of 2012 provides for the mandatory procedures during eviction as follows: -

“an unlawful occupant of private, community or public land shall be evicted in accordance with this Act”.

What is that procedure to be followed?

Under Section 152G,



1. Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-
 - a. be preceded by the proper identification of those taking part in the eviction or demolitions;
 - b. be preceded by the presentation of the formal authorizations for the action;
 - c. where groups of people are involved, government officials or their representatives to be present during an eviction;
 - d. be carried out in a manner that respects the dignity, right to life and security of those affected;
 - e. include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
 - f. include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
 - g. include mechanisms to protect property and possessions left behind involuntarily from destruction;
 - h. respect the principles of necessity and proportionality during the use of force; and
 - i. give the affected persons the first priority to demolish and salvage their property.

10. The Officer Commanding Nyamira Police Station and the officer in charge of Nyamatoki Police Post are therefore ordered to supervise this eviction in accordance with the above provisions of the [Land Act](#) as well as the strict observance of Section 152H of the [Act](#) on disposal of property left after eviction.

The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land”.

11. The Court also cautions the Respondents to carry themselves with dignity during the exercise.

These are the Orders of the Court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF MAY 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Nyangaresi - Court Assistant

Mr. Masolo for the Plaintiff

1st Defendant present in court in person

