



**Inoti v M'Mutunga (Sued as the legal representative of David M'Marete (Deceased)
(Environment & Land Case 37 of 2020) [2023] KEELC 17636 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 37 OF 2020**

CK NZILI, J

MAY 24, 2023

BETWEEN

MARY KITHINJI INOTI PLAINTIFF

AND

**SALOME KARUGA M'MUTUNGA (SUED AS THE LEGAL REPRESENTATIVE
OF DAVID M'MARETE (DECEASED)) DEFENDANT**

RULING

1. Before the court is an application dated March 10, 2023 in which the applicant seeks an eviction order against the respondent. The grounds are on the face of the application and an affidavit sworn by Salome Karuga M'Mutungi on March 10, 2023. She averred that the judgment was delivered on October 26, 2022, and an application dated 37.10.2022 was dismissed. A month had passed since the application was rejected, yet the respondent continued to deny the applicant access. The application was opposed by a replying affidavit of Kiiru Kithinu Moti sworn on April 14, 2023 because he would suffer if the application is allowed; he has been in occupation of LR No Nyaki/Mulathankari/498, which was subdivided into the suit land, and that there is an arguable appeal with a probability of success. That the dispute has been submitted to Njuri Ncheke elders and the area chief. He has extensively developed the land, and the respondent will suffer no prejudice. Even though parties were directed to submit written submissions, none had been filed by the deadline.
2. It appears that the applicant without leave of court filed submissions and a further supporting affidavit on May 9, 2023. Court orders and directives have to be followed. The court cannot admit the further affidavit without leave and a notice to the respondent. Reliance was however placed on *Mariko Ndwiga vs Edith Muthanje* (2020) eKLR on the proposition that an eviction order was merited.
3. The law on eviction is that a party must give the mandatory statutory notice of 3 months to the person to be evicted. The applicant in this suit had not raised any counterclaim to the respondent's claim. She is now moving the court to grant orders not decreed in her lawsuit.



4. There is no indication if the applicant served the aforementioned statutory notice to the respondent.
5. No decree was issued in favor of the applicant for execution to form the basis for this court to issue a post-judgment application. The application contradicts order 22 rule 18 of the Civil Procedure Rules. Parties are bound by their pleadings, and courts should not allow the doctrine of departure at any stage of the proceedings.
6. The applicant had not pleaded and prayed for any substantive reliefs against the respondent in the primary pleadings, including an order of vacant possession or an eviction. She cannot, therefore, attempt to do so post-judgment and, more so when there is a pleading appeal. This court is already functus officio and cannot re-open the suit, review its judgment and include issues or prayers that were not litigated before it. See IEBC & another vs Stephen Mule Mutinda & 3 others (2014) eKLR, Raila Odinga vs IEBC & another (2017) eKLR, Teclon (K) Ltd vs John Ochanda (2014) eKLR.
7. Therefore, I find no basis to re-engage the parties on an issue which was neither pleaded nor prayed for.
8. On the second request for the OCS to effect the order, again, this court has a licensed court bailiff and auctioneers who under the law, are the ones to execute court processes, especially on eviction, in line with Sections 152A, 152B, 153C and 153D of the Land Registration Act as read together with Rules 12 & 15 of the Auctioneers Rules 1997. It is only the auctioneers, if necessity demands, who would seek the said assistance; otherwise, statutorily under the National Police Service Act, police duties do not include execution of civil courts decree or orders as held in Kangethe vs Mumo (2022) KEELC 2434 (KLR) (May 12, 2022) Ruling).
9. The upshot is that the notice of motion dated March 10, 2023 is now dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 24TH DAY OF MAY, 2023

HON. C.K. NZILI

ELC JUDGE

In presence of:

C.A John Paul

Nyenyire for respondent

Mrs. Otieno for the applicant

