



**Gathoni v Njoroge & 3 others (Environment & Land Case
21 of 2018) [2023] KEELC 18013 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18013 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 21 OF 2018**

**A OMBWAYO, J
JUNE 15, 2023**

BETWEEN

JOSPHAT KURIA GATHONI PLAINTIFF

AND

JAMES MAINA NJOROGE 1ST DEFENDANT

JULIUS TANGUS 2ND DEFENDANT

STANLEY K. SITIENEI 3RD DEFENDANT

EVANSON NJENGA 4TH DEFENDANT

RULING

1. Josphat Kuria Gathoni (hereinafter referred to as the Decree holder (applicant) has come to the court against the defendant judgement debtor seeking for an order of eviction against the defendant or employees from parcel number Nakuru/Kapsita/1096. He also seeks order that the OCS Elburgon Police Station be authorized to enforce compliance of the orders. The application is based on grounds that the applicant is legal proprietor of the parcel of land known as Nakuru/Kapsita/1096 been allocated the same by the government and title deed issued.
2. That the defendants herein started encroaching and trespassing into the plaintiff's parcel of land which necessitated filing of the instance suit.
3. That the matter was heard and determined in its merits upon which the court entered judgment in favour of the plaintiff and ordered the defendants to vacate the land within 30 days.
4. That the defendants/respondents despite being aware of the judgment have adamantly refused to comply and/or give vacant possession to the plaintiff.



5. That it is only fair and just that the eviction order be issued and the OCS Elburgon Police Station be authorized to enforce compliance and keep peace.
6. That the respondents have violated the plaintiff's applicant's constitutional right to own and enjoy property for a long period which should not be countenanced by any court of law.
7. The supporting affidavit of Josphat Kurua Gathoni reiterates the grounds of the application. The judgment debtors/ respondents filed grounds of opposition whose import is that the application is incompetent, premature and in clear breach of section 94 of the CPA Cap 21 Laws of Kenya. That the said application defies mandatory provisions of section 152 to 152 of the land Act and ought to be summarily dismissed with costs.
8. I have considered the application and the rival submissions and do not agree with the submissions made by Musembi Ndolo learned advocate for the respondent that leave of the court is necessary in this case because taxation has not been done. The decree herein is not a monetary decree and therefore execution can be done before taxation. Moreover, no prejudice would be suffered by the judgment debtor if execution is undertaken before taxation. On the application of sections 152 F and 152G of the Land Amendment Act 2016, I do disagree with the argument by Mr Ndolo, learned counsel for the respondent that the provisions should be complied with where there is a judgment. My view is that since the judgment is self-explanatory and gives the timelines of compliance there is no need to comply with those sections of law. The upshot of the above is that the application is allowed partially that the applicant is granted orders to evict the judgment debtors after issuing a 30 days' notice. The applicant to follow due process of eviction as the police have no duty in evicting parties from the suit parcel of land. The procedure to be followed is the engagement of a court bailiff who will apply for police security if necessary. Costs to the applicant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU ON THIS 15TH DAY OF JUNE 2023.

A. O. OMBWAYO

JUDGE

