



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL CASE NO.11 OF 2018**

**RISPER KERUBO ONSARE.....PLAINTIFF**

**-VERSUS-**

**DR. VIJAY KUMAR SAIDHA**

**HARIA RAJESH NEMCHAD**

**HANIF ZULFIKAR AHMED HASHAM.....DEFENDANTS**

**JUDGMENT**

1. The plaintiff is the registered proprietor of land parcel no. Kisii Town/Block 111/128 and the commercial and residential buildings erected thereon. The defendants have been occupying the residential section of the plaintiff's premises for a long time. The plaintiff has sued the defendants claiming that they refused to sign tenancy agreements and had also refused to accept any rent increments thereby souring their relationship. She claims that she issued notices dated 5<sup>th</sup> April 2018, which were served upon the defendants on 9<sup>th</sup> April 2018, giving the defendants up to 31<sup>st</sup> July 2018 to vacate the premises and deliver up vacant possession. The defendants did not oppose the notices but continued their occupation after the expiry of the period given in the notices.

2. The plaintiff averred that there had been numerous cases between the parties including matters before the Rent Restriction Tribunal and the lower court at Kisii i.e. Kisii C.M.C.C. No. 417 of 2015 and now an appeal in the High Court being Civil Appeal No. 78 of 2018. She also claimed that the defendants had failed to pay rent for over four years and she therefore sought the following orders against the defendants;

- a. An order of declaration that the defendants continued occupation of the plaintiff's land parcel no. KISII TOWN/BLOCK III/128 after the expiry of the Notices dated 5<sup>th</sup> April 2018 is illegal;
- b. An order of eviction evicting the defendants, their agents and/ or servants from the plaintiff's premises on land parcel aforesated;
- c. Costs of this suit;
- d. Any other or further relief as the court may deem fit to grant.

3. The defendants filed a joint statement of defence in response to the plaintiff's claim. They asserted that they were lawful tenants in respect of the suit property, remitting monthly rents in favor of the plaintiff up to the year 2015. They claimed that in September 2015, the plaintiff instructed M/s Minmax Auctioneers to levy distress against their movable properties while there was no outstanding rent arrears. This caused the defendants to commence civil proceedings vide Kisii CMCC. No. 417 of 2015 which culminated in the delivery of a judgment on 10<sup>th</sup> August 2018 whereby the distress was found to have been illegal. They claimed that upon the levying of distress, they were compelled to pay KShs. 1,374,000/= on account of purported rent arrears which were non-existent. Thus, the money was deemed to be advance rent in favour of the plaintiff.

4. The defendants denied the plaintiff's claim that they had refused to sign tenancy agreements. They claimed that during the entire period of occupation in the suit premises, the plaintiff had never availed a mutual agreement, for purposes of deliberations with the defendants and execution thereafter. They also averred that the notices dated 5<sup>th</sup> April 2018 were illegal and void *ab initio* as they were issued in contravention of the orders issued vide Kisii CMCC No. 417 of 2015. The defendants were adamant that their tenancy relationship with the plaintiff remained vibrant and valid and could only be terminated by a court order. They also claimed that the plaintiff had been paid further rents in respect of the suit premises and could not purport that they had not paid rent. The plaintiff was therefore not entitled to the eviction

orders sought.

5. The defendants also indicated that they would raise preliminary objections on the grounds *inter alia* that the subject matter was *res judicata* Kisii CMCC No. 417 of 2015; that this court lacked jurisdiction as the subject matter touched on an interest in land; the plaintiff did not disclose any reasonable cause of action and the suit was an abuse of court process.

## **EVIDENCE**

6. The defendants' claim that the suit was *res judicata* Kisii CMCC No. 417 of 2015 heard and dismissed in ruling dated 24<sup>th</sup> October 2019, after which this matter proceeded for hearing.

7. The plaintiff, Risper Kerubo Onsare, reiterated that she was the owner of the suit property. She produced a copy of the lease confirming ownership as P. Exhibit No.1. and the Notices she had sent to the defendants as exhibits No. 2(a) (b) & (c). She testified that she had given each of the defendants a notice to vacate by 31<sup>st</sup> July 2017 and they had all received them on 9<sup>th</sup> April 2018 but they had not responded.

8. She recalled that when she bought the house in 1990 and had it transferred to her name in 1993, the defendants were in occupation of the premises. She told the court that the defendants had refused to sign a lease agreement or accept her rent increment. She also accused them of failing to pay rent for 6 years. She therefore urged the court to issue orders to evict them.

9. During cross examination, the plaintiff testified that the defendants did not pay her rent when she took over the premises despite being told that she was the owner. She could not recall what the rent was at the time, but stated that she had given each defendant a rent card and when they paid rent, it was indicated. However, on being referred to the rent card and several receipts annexed to the defendant's list of documents, the plaintiff stated that she had not seen them before and could not recall if rent was paid. She also testified that her agent was required to sign but she could not recall her agents as she had had several.

10. The plaintiff admitted that after she brought distress for failure to pay rent, the defendants paid her Kshs. 30,000/= for each house as she had wanted but went back to paying the old rent after taking her to court. She stated that her case was for eviction and the issue of unpaid rent would be dealt with later.

11. Haria Rajesh Nemchad (DW1) the 2<sup>nd</sup> defendant in the case admitted that he lived in the premises owned by the plaintiff. He adopted his statement as his evidence and produced the defendants' bundle of documents as his evidence. He added that when they received the notice dated 5<sup>th</sup> April 2018 they approached their lawyer as they did not agree with it. He testified that there was an ongoing matter between the defendants and the plaintiff and part of the issue was termination of the tenancy with the plaintiff. He referred the court to the decision in that matter dated 10<sup>th</sup> August 2018 where the plaintiff's counter claim to evict them had been dismissed with costs. DW1 told the court that when the notice to vacate was issued, the case had not been concluded. They had filed an application in the matter and the court had issued an injunction that they were not to be evicted.

12. On rent, DW1 testified that they had paid rent for 2016, 2017 and 2018 but had not paid anything since then as the plaintiff had refused to take their rent. He stated that they had paid a total of Kshs. 1,374,000/= on account of distress and the amount had not been refunded. They had therefore treated the money as advance payment of rent for 4 to 5 years ending in 2023.

13. During cross examination, DW1 stated that he became the plaintiff's tenant in 2003 when he was given a rent card but he had been residing in the premises since 1998. He testified that in 1998, rent was Kshs. 2,500/=, in 2003 rent was about Kshs. 5,000/= and the current rent was Kshs. 22,000/= for 2 houses.

14. DW1 stated that he was testifying on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> defendants who were his neighbours in order to save the court's time but admitted that he did not pay rent for them. He told the court that the 1<sup>st</sup> defendant had gone abroad in 2020 and his premises were not occupied. However, the 3<sup>rd</sup> defendant was in Kisii. He also admitted that each of them had been given his notice and they had acknowledged receipt. DW1 stated that the plaintiff had wanted to increase the rent to 30,000/= but they had rejected that increment. He stated that the court had ordered that they be refunded the money they had paid and stated that if their money was refunded they would move out.

## **SUBMISSIONS**

15. The plaintiff's counsel submitted that the genesis of this matter was the refusal by the defendants to pay the plaintiff increased rent for the premises. When the plaintiff issued proclamation of the defendants' goods they paid a total of Kshs. 1,374,000/= but filed in CMCC No. 417 of 2015 seeking a refund of the money. Counsel submitted that although the suit was decided in favour of the defendants, the orders issued in that matter did not stop the plaintiff from issuing the Notice to terminate. It provided that due process of law be followed, which the landlady had exercised in issuing the Notice to terminate tenancy.

16. Counsel submitted that the money the court ordered to be refunded had been deposited in the court pursuant to the order of 23<sup>rd</sup> September 2015 and had remained in court since then. It was her submissions that the law recognized a Notice to terminate by a landlord. She referred to Order 36 Rule 1(1) (B) of the Civil Procedure Rules which provides;

### **Order 36 Rule 1**

1. *In all suits where a plaintiff seeks judgment for -*

(b) *the recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or*

been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits.

17. Counsel relied on the case of **Jubilee Insurance Company of Kenya vs Joseph Ndung'u Karega t/a Leather Touch Foot Care Specialist [2014] eKLR** where the court found that it was within the plaintiff's right to issue a notice of termination upon expiration of a lease and it was incumbent upon the defendant to give vacant possession. Counsel submitted that no sufficient reason had been given for failing to give vacant possession. The plaintiff had therefore proved her case on a balance of probabilities and was entitled to the orders sought in the plaint.

18. The defendants' learned counsel raised 4 issues in his submissions. The first was on jurisdiction of this court to determine the matter. Counsel submitted that the suit was on continued occupation of the suit property and the eviction of the defendants from the subject premises. This issues, he argued, did not fall within the jurisdiction of the High Court but the Environment and Land Court. He drew the court's attention to **Article 162 (2) (b)** of the Constitution which establishes the Environment and Land Court to hear and determine matters on the environment and the use and occupation of and title to, land. He also highlighted **section 13 (1) (d)** of the **Environment of Land Act** which states that the Environment and Land Court has jurisdiction to here and determine disputes relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land. Counsel submitted that the contract between the plaintiff and the defendants related to occupation and use of a portion of the subject premises. He submitted that the fact that the tenancy had not been reduced into writing did not negate the validity of the tenancy. Relying on the cases of **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] eKLR** and **Esther Gachambi Mwangi v Samuel Mwangi Mbiri [2013]eKLR**, counsel submitted that this court did not have the requisite jurisdiction to issue orders or determine issues pertaining to the occupation and use of the suit property.

19. The second issue raised by counsel was on the doctrine of *lis pendence*. He submitted that when the notice to terminate tenancy was issued on 5<sup>th</sup> April 2018 Kisii CMCC No. 417 of 2015 was still pending determination. Judgment in that matter was issued on 10<sup>th</sup> August 2018. The plaintiff could not therefore legally issue and serve a Notice to terminate tenancy on account of non- payment of rent while the issue was pending hearing and adjudication before the court. To buttress this point counsel relied on the case of **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others (supra)** where the court held that the doctrine of *lis pendens* was still applicable and bound parties to preserve property during the pendency of active prosecution of proceedings. Hence the notices issued while the suit was still ongoing were premature and invalid.

20. Counsel further submitted that the plaintiff was not entitled to the orders sought having received and withheld monies obtained from the defendants. He submitted that DW1 had testified that during the illegal distress, the plaintiff recovered a total of Kshs. 1,374,000/= from the defendants which would constitute rent in advance up to 2021. He submitted that while the plaintiff sought to terminate tenancy on account of non-payment of rent, she was still holding money which had not been accounted for.

21. Counsel submitted that the plaintiff had not proved the requisite ingredients underlying the suit including proof of non-payment of rents by the defendants for over 4 years, the legality of the Notice to terminate tenancy and her entitlement to recover vacant possession in respect of the suit property.

22. Lastly, counsel urged that the suit did not raise a reasonable cause of action. He submitted that since the Notice to terminate tenancy was illegal in light of the decision of the court in CMCC No. 417 of 2015, sanctioning the Notice would be tantamount to aiding the desecration of the due process of the law.

23. In response to the defendants' submissions, the plaintiff's counsel filed further submissions in which she asserted this court's jurisdiction to evict a tenant under a tenancy that had ceased. She cited the case of **Jitendra Mathurdas Kahabar & 2 Others vs Fish and Meat Limited [1997] eKLR** in support of this submissions. Counsel further submitted that the magistrate's court did not make any order to convert the money to future rent as argued by the defendants and there was no subsisting tenancy agreement as the landlord had stopped receiving rent after 31<sup>st</sup> July 2018. It was also her submissions that the doctrine of *lis pendens* was only applicable to land disputes and did not apply to this case which was on termination of tenancy.

#### **ANALYSIS AND DETERMINATION**

24. Having carefully considered the pleadings, the evidence and the submissions before this court, I find that the issues arising for determination are;

- a. Whether this court has jurisdiction to determine this matter;
- b. Whether the plaintiff was entitled to issue the Notices to terminate tenancy;
- c. Whether the Notices dated 5<sup>th</sup> April 2018 issued by the plaintiff to terminate tenancy were lawful; and
- d. Whether the plaintiff is entitled to the reliefs sought.

25. The defendants contend that this court lacks jurisdiction to determine the subject matter before this court as it touches on occupation and use of the suit property. They argue that issues pertaining to contracts, choses in action and other instruments granting any enforceable interest in land can only be dealt with by the Environment and Land Court pursuant to **Article 162 (2)** of the Constitution and **Section 13** of the **Environment and Land Act**.

26. In the case of **Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited Civil Appeal No.35 of**

2015 [2015] eKLR however, the Court of Appeal held;

*“As earlier discussed, the High Court had jurisdiction to entertain the eviction proceedings and its jurisdiction in this regard was thus not a triable issue, since there was no longer a Landlord/Tenant relationship between the parties.”*

27. The subject of the dispute before this court is whether the defendants should give vacant possession to the plaintiff in the absence of a tenancy agreement between the parties. Guided by the foregoing authority, I find that the defendant's contestation against this court's jurisdiction untenable. Having crossed over the jurisdictional hurdle, I turn to the substantive issues which I will deal with collectively.

28. The agreed facts in this case are that the plaintiff is registered owner of land parcel no. Kisii Town/Block III/128 and the defendants reside in the property erected on the plaintiff's land. Although the length of the tenancy was not ascertained, it is clear that the defendants have been the plaintiff's tenants for a long time. The evidence also shows that the tenancy agreement between the parties was never reduced into writing during that time.

29. The relationship between the plaintiff and the defendants took a turn for the worse when the plaintiff reviewed the monthly rent upwards in the year 2015. Initially, the 1<sup>st</sup> and 3<sup>rd</sup> defendants were paying a monthly rent of Kshs. 13,000/= for each of their two units while the 2<sup>nd</sup> defendant was paying Kshs. 22,000/= for his units. In the revised rents, the defendants were all required to pay Kshs. 30,000/= for each of their units as from January 2015. Their insistence on paying rent at the old rates caused the plaintiff to instruct an auctioneer to levy distress for rent.

30. On 19<sup>th</sup> September 2015, the auctioneer instructed by the plaintiff moved to levy distress at the premises occupied by the defendants. Fearing humiliation, the defendants paid the plaintiff a total of Kshs. 1,374,000/=. They however filed Civil Case No. 417 of 2015 before the Magistrate's Court in Kisii, seeking *inter alia*, a refund of the sum of Kshs. 1,374,000/= and a declaration that the distress levied against them was illegal. The plaintiff not only filed a statement of defence in response to the defendants' suit but also filed a counterclaim seeking a declaration that the defendants were not protected tenants and had to pay the revised rent of Kshs. 30,000/= per unit.

31. In its judgment delivered on 10<sup>th</sup> August 2018, the trial court found that the distress levied to the defendants herein was illegal and issued an injunction restraining the plaintiff from levying distress on the premises without due regard to the law. It also directed the plaintiff to refund the defendants the sum of Kshs. 1,374,000/= and pay each of the defendants general damages of Kshs. 100,000/= for trespass in pursuit of the illegal distress.

32. Aggrieved by that decision, the plaintiff instituted an appeal to the High Court vide Civil Appeal no. 78 of 2018. The High Court upheld the trial court's finding that the distress levied against the defendants was illegal and they were entitled to damages. The court also upheld the trial court's finding that the defendants were entitled to a refund of the payments made as a result of the default and dismissed the appeal in a judgment dated 3<sup>rd</sup> May 2019.

33. The plaintiff states that she issued notices dated 5<sup>th</sup> April 2018 to each of the defendants demanding vacant possession of the premises on or before 31<sup>st</sup> July 2018. The Notices sent to the defendants read as follows;

RE: NOTICE TO GIVE VACANT POSSESSION OF PREMISE ON L.R. NO. KISII TOWN/BLOCK III/128- HOSPITAL ROAD

OUR CLIENT RISPER KERUBO ONSARE

*We act for Risper Kerubo Onsare our client who has instructed us to write and address you as hereunder:*

*Our client is the registered proprietor of plot number Kisii Town/Block 111/128 situated within Kisii County in the Republic of Kenya.*

*Our client states that there is no lease agreement between yourselves and herself and accordingly demand that you vacate from the premises and remove your belongings on or before 31<sup>st</sup> July 2018.*

*Take further notice that if you do not comply with the notice hereof, we have firm instructions to commence eviction proceedings against you at your peril as to costs and consequent expenses.*

*Yours Faithfully,*

*Anyoka & Associates.*

34. DW1 confirmed that each of the defendants had received the notice reproduced above. The plaintiff's counsel submitted that there was no need for the plaintiff to give a reason for her termination of the relationship as the tenancy was not protected. For his part, the defendant's counsel submitted that when the Notice to Terminate Tenancy was issued, the original suit Kisii CMCC No. 417 of 2015 was still pending the determination of the court and the judgment in that matter was only rendered on 10<sup>th</sup> August 2018. Counsel argued that based on the doctrine of *lis pendens*, the plaintiff could not legally issue and serve a Notice to Terminate Tenancy on account of non-payment of rents while that issue was still pending hearing and adjudication before a judicial forum.

35. The defendants also claimed that the plaintiff had been paid a sum of Kshs. 1,374,000/= which had not been refunded and the amount therefore comprised of rent up to the year 2021. It was argued that the plaintiff's basis for issuing the Notice to terminate the Tenancy, was

her claim that the defendants had not paid rent but she had failed to prove her claim that the defendants had not paid rent for over 4 years and was therefore not entitled to the prayers sought.

36. In the case of **Cooperative Bank of Kenya Limited v Patrick Kangethe (supra)** the court defined the doctrine of *lis pendens* as follows;

50. As to whether there is any interplay between statutory power of sale and the doctrine of *lis pendens*; the Black's Law Dictionary defines *lis pendens* as the jurisdiction, power or control acquired by a court over property while a legal action is pending. The Supreme Court of India in the case of *KN Aswathnarayana Setty (D) Tr. LRs. & Others v. State of Karnataka & Others [2013] INSC 1069* stated that the doctrine is based on the legal maxim 'ut lite pendente nihil innovetur' (During a litigation nothing new should be introduced). The doctrine is couched equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail.

...

53. Presently, the LRA does not prohibit the application of the doctrine of *lis pendens*; nor does any law for that matter. For this reason and in view of Section 107 aforesaid, this Court has previously held that the doctrine of *lis pendens* is still applicable to this day, albeit under common law (see. *Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another [2015] eKLR*)

37. Madan JA in the case of **Mawji vs US International University & another [1976] KLR 185**, defined the doctrine thus;

*"The doctrine of lis pendens under section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of lis pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other..."*

38. Although the timing of the issuance of the Notices dated 5<sup>th</sup> April 2018 by the plaintiff was questionable as the parties were engaged in litigation over the suit premises, I find that the Notices were not defeated by the doctrine of *lis pendens*. In the case of **Patrick Gathitu Kariuki v Hottensiah Wambui Hinga & Another [2020] eKLR** the court held that;

*"Breach of the lis pendens rule per se in my view does not nullify a sale transaction. What it does is to make the transaction subject to the outcome of the court proceedings which were pending when the transaction involving the land in question was carried out."*

39. The plaintiff did not alienate, transfer or deal with the property in a manner that conferred the rights over the suit property to other third parties. When the time given for vacation of the premises had lapsed, the plaintiff did not evict the defendants or interfere with their enjoyment of the premises in any way. This leads us to the question whether the plaintiff was entitled to issue a notice to terminate the tenancy relationship.

40. In the case of **Jubilee Insurance Company of Kenya Limited v Joseph Ndugu Karega T/A Leather Touch Foot Care Specialists [2014] eKLR** the court held as follows on issuance of notices to unprotected tenancies;

*The Defendant submits that his business will suffer in the event that the Court grants eviction orders as he has been on the premises for well over 11 years now. It is his submission that he has heavily invested in his business and has continued to faithfully pay rent to the Plaintiff over the years. Having found that the Plaintiff is not a protected tenant, the more than 3 month notice issued to the Defendant to vacate the premises upon expiration of the lease was sufficient. Further, unlike in controlled tenancies, the landlord need not give reasons for issuing notice to terminate or declining to grant extension of a lease period. The Defendant ought to have made arrangements to relocate its business.*

41. The courts in Civil Appeal no. 78 of 2018 and Kisii CMCC No. 417 of 2015 did not bar the plaintiff from terminating the tenancy relationship between her and the defendants if due process was followed. The defendants' claim that the Notices issued to them were based on a failure to pay rent is not factual, as a reading of the Notices shows that the plaintiff did not give any reason for terminating the tenancy. In her plaint, the plaintiff averred that she was compelled to issue the Notices due to the defendant's failure to sign tenancy agreements and accede to rental increments. The defendants admitted that they had not accepted the plaintiff's increment in rent and also agreed that there was no tenancy agreement between the parties. DW1 also admitted that the plaintiff had refused to take rent payments from the defendants since 2018.

42. The court in Civil Appeal No. 78 of 2018 found that the defendants were not protected tenants within the meaning of Section 4 of the Rent Restriction Act. The tenancy agreement between the parties was unwritten and based on the payment and acceptance of rent for successive periods until either party gave a notification that they wanted to terminate the tenancy. **Section 57 (4) of the Land Act** provides that such periodic tenancies may be terminated by either party giving notice to the other and the length should be not less than the period of the tenancy. The plaintiff was therefore within her right to issue the Notices dated 5<sup>th</sup> April 2018 to the defendants. There was no requirement for her to give reasons for terminating the relationship as long as she gave notice for the period of the tenancy.

43. The defendants' assertion that the sum of Kshs. 1,374,000/= comprised of rent up to the year 2021 is unacceptable as it would amount to a unilateral variation of the contract. It is upon the parties to negotiate and agree on the terms of an agreement they intend to be bound by. One party cannot vary the terms of an agreement without the consent of the other party and seek enforcement of the modified terms. In **Housing Finance Co. of Kenya Limited vs. Gilbert Kibe Njuguna Nairobi HCCC No. 1601 of 1999**, it was held that;

*"Courts are not foras where parties indulging in varying terms of their agreements with others will get sanction to enforce the*

varied contracts. Contracts belong to the parties and they are at liberty to negotiate and even vary the terms as and when they choose and this they must do together and with meeting of the minds. If it appears to the Court that one party varied terms of the contract with another, without the knowledge, consent or otherwise of the other, and that other demonstrates that the contract did not permit such variation, the Court will say no to the enforcement of such contract.”

44. The court in Civil Appeal no. 78 of 2018 also held;

“17. On the one hand the respondents stated that they had agreed with on rent which they had continued paying while the appellant contended that she had increased the rent by notifying the respondents. In fact, the appellant in her counterclaim urged the trial court to find that the plaintiffs must pay the reviewed rent of Kshs 30,000/-. Against these contentions is the principle I have outlined that when varying an agreement, oral or otherwise, the principles of offer and acceptance must be observed and the rent increase will only be effected if there is consensus ad idem. The notice to increase rent issued by a landlord constitutes an offer and the tenants have the option of accepting it and paying the proposed amount, or holding negotiations with the landlord or in the event negotiations fail, either party may elect to terminate the lease.”

45. The plaintiff has made it clear that the rents being paid by the defendants are oppressive and not in sync with the prevailing market values. She has made an offer to the defendants who could either agree to the rental increments and remain in her premises or reject it and give her vacant possession of the suit premises. In this case the defendants have elected the latter and cannot continue in occupation in the absence of an agreement. The defendants have had sufficient notice to vacate the premises. They are at liberty to execute the orders of the court in CMCC No. 417 of 2015 which had ordered the plaintiff to refund the sum of Kshs. 1,374,000/= pursuant to Section 30 of the Civil Procedure Act which provides that a decree may be executed by the court which passed it or by the court to which the decree is sent for execution.

46. In the end, I find the plaintiff's case to be merited. The orders sought in the plaint are allowed as follows;

- i. The defendants continued occupation of the Plaintiff's L.R No. Kissi Town/ Block 111/128 after the expiry of the Notices dated 5<sup>th</sup> April 2018 is illegal.
- ii. The defendants shall vacate the said suit premises within 30 days.
- iii. If the defendants fail to vacate the said suit premises, the plaintiff shall be at liberty to evict the defendants, their agents and/or servants from the plaintiff's premises on land parcel aforesaid.
- iv. The defendants shall bear the costs of this suit.

**DATED, SIGNED AND DELIVERED AT KISII THIS 27TH DAY OF JULY 2021.**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Mr. Omangi For the Plaintiff**

**Defendant Absent**

**Mr. Orwasa Court Assistant**