



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

ELC NO. 37 OF 2006 (O.S)

RECHO CHEMUTAI CHERUTO.....PLAINTIFF

VERSUS

DAVID KIPRONO ARAP BOIT.....DEFENDANT

RULING

1. The applications before me is one dated the 28th April 2019 filed pursuant to the provisions of Order 51 Rule 1 & 3, Order 22 Rule 29 of the Civil Procedure rules and section 3A of the Civil Procedure Act and all enabling provisions of the law where the Applicant/Plaintiff herein seeks for an order of eviction to have the Defendant/Respondent to move out of the land parcel LR No. Kericho/Nyamanga/131 (the suit land) and further orders to have the OCS Roret police post to render assistance.
2. The second application is dated the 2nd March 2020 by Defendant herein brought under the provisions of Order 45 Rule 1 of the Civil Procedure Rules and Section 1A(2),1B,3A & 80 of the Civil Procedure Act where the Defendant seeks that the court reviews and/or sets aside its ruling and orders issued on the 28th November 2019.
3. Directions were taken on the 1st February 2021 to have both applications disposed of by way of written submissions wherein as at the time I write this ruling, only the Plaintiff has complied with the court's directions.
4. I have considered both the Applications herein, the submissions thereto and the authorities cited. The issue for determination is whether the Applicants herein are entitled to the orders sought in their respective applications.
5. The Plaintiff's application dated the 28th April 2019 is based on the fact that via a judgment **delivered on the 27th of February, 2018 and a subsequent order of the court dated the 16th May 2018, the court had decreed that she had acquired 1.6 hectares** of the suit land by adverse possession and that the Respondent/Defendant should transfer the same to her within 30 days of the judgment, in default the Executive Officer of the court be authorized to sign the transfer documents on behalf of the Defendant to the Plaintiff .
6. Subsequently the Plaintiff acquired title to the suit land on the 15th March 2019 but the Defendant still remains in occupation of the same to the Plaintiff's detriment and proprietary right thereby occasioning him to suffer loss and damage.
7. Pursuant to the filing of the said application the Defendant herein filed his application dated 15th May 2019 in which he sought to stay the execution, set aside and/or review the judgment delivered on 27th February 2019. By consent the application dated 28th April 2019 was kept in abeyance pending the outcome of the one dated 15th May 2019.
8. The Ruling on application dated 15th May 2019 was subsequently delivered on the 28th November 2019 dismissing the Defendant's application with costs to the Plaintiff.
9. I find that there is already judgment in favour of the Plaintiff, the Defendant's application seeking to stay the order of execution of the judgment having been dismissed by the court's ruling of 28th November 2019 and if the Defendant has refused to vacate the suit land as per the terms of the judgment, then there is no other option to have the Plaintiff enjoy the fruits of her judgment other than having the Defendant forcefully evicted.
10. On the second Application dated the 2nd March 2020 where the Defendant seeks that the court reviews and/or sets aside its ruling and orders issued on the 28th November 2019.
11. Order 45 Rule 6 of the Civil Procedure Rules is very clear and bars subsequent applications to review an order made on an application for a review. The same provides as follows:

‘No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.’

12. In the present case, I find that the Applicant/Defendant having filed his Application dated the 15th May 2019 in which he sought to review the judgment delivered on 27th February 2019 amongst other orders and whose application had been dismissed, had in my humble view exhausted the process of review and now wishes to have a second bite of the cherry and with the instant application which constitutes an abuse of the process of the court and the same must surely fail.

13. Litigation must come to an end and for the Defendant, litigation cannot be conducted on the basis of trial and error and that is why there are provisions of the law and the procedure to be adhered to. The Defendant’s application dated the 2nd March 2020 is herein dismissed.

14. I therefore allow the Plaintiff’s application dated the 28th April 2019 and issue an order for the eviction of the Defendant from the land parcel LR No. Kericho/Nyamanga/131, as provided by the law. I further order the OCS of Roret police post to render assistance and supervise the eviction so as ensure that peace and order is maintained during the eviction exercise.

15. The Defendant shall shoulder the costs of both the application dated the 28th April 2019 and 2nd March 2020 as well as the costs that the Plaintiff may incur in executing the eviction order.

16. Orders accordingly.

DATED AND DELIVERED AT KERICHO VIA MICROSOFT TEAMS THIS 28TH DAY OF OCTOBER 2021.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE