



**Adera v Okode (Environment & Land Case 296 of 2017)
[2023] KEELC 19311 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 296 OF 2017
MN KULLOW, J
JULY 13, 2023**

BETWEEN

JOHNSON OTIENO ADERA PLAINTIFF

AND

PAUL ODERA OKODE RESPONDENT

RULING

1. The Plaintiff/ Applicant herein filed a Notice of Motion Application dated March 14, 2023, seeking the following Orders: -
 - a. Spent.
 - b. That the Honourable Court be pleased to issue an Order directing the OCS and/or OCPD, Rongo Police Station to ensure the Defendant complies with the Court's orders issued on July 29, 2022.
 - c. That the costs of this Application be provided for.
2. The Application is premised on the 5 grounds thereon and on the Applicant's Supporting Affidavit sworn on even date. The Applicant contends that judgment was rendered in the matter on July 29, 2022 in his favor and whose effect was to direct the Defendant vacate the suit land within 60 days from the date of the judgment and in default an Order of Eviction to issue thereto.
3. It is his claim that despite the Court issuing strict timelines of 60 days within which to vacate the suit land; the Defendant/ Respondent has failed to comply and continues to occupy the suit premises. He is therefore apprehensive that as a result of the said actions by the Defendant, he stands the risk of losing his property. He thus urged the court to allow the Application which primarily seeks the assistance of the OCS/ OCPD Rongo Police Station, in enforcing the Court Orders issued on July 29, 2022.



4. The Application was opposed. The Defendant/ Respondent filed a Replying Affidavit sworn on April 05, 2023. It is his contention that his advocate was not aware that judgment had been delivered in the matter and he only recently learnt of the same 8 months later, when he was served with the notice of eviction.
5. It is further his claim that he intends to Appeal out of time but due to financial constraints, he has been unable to either lodge the appeal out of time and/or find an alternative parcel of land to relocate to. He thus urged the court to grant him at least 4 months to enable him put his house in order in full compliance with the court orders.
6. The Application was canvassed by way of written submissions. From the court record, I have noted that only the Applicant filed his written submissions dated May 04, 2023 which I have read and taken into account. However, the Respondent informed the court on May 22, 2023 that he would be relying on his response to the Application as his submissions.
7. The sole issue for determination before me is whether the Application dated March 14, 2023 is merited.
8. It is not in dispute that the judgment herein was delivered on July 29, 2022 in favor of the Plaintiff. The effect of the said judgment was to order the Defendant to voluntarily vacate the suit land within 60 days from the date of the judgment and in default, an eviction order to issue against the Defendants. It is common ground that the said judgment has neither been set aside, varied nor appealed against by the Defendant/Respondent and the terms thereof are still binding on all the parties. Further, there is no Order for stay of execution in respect of the said Judgment or Decree. It is also not in dispute that the defendant/respondent is still in occupation of the suit parcel.
9. I have looked at the contents of the said judgment & Decree dated July 29, 2022 and the terms therein, particularly order (a) on the period within which the defendant was directed to hand over vacant possession and (d) on the strict compliance with the statutory provisions on eviction, that is, section 152E of the Land Act.
10. Section 152E of the Land Act provides as follows: -
 - “(1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.
 - (2) The notice under subsection (1) shall –
 - (a) be in writing and in a national and official language;
 - (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
 - (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
 - (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.



11. In the instant case; even though the defendant/ respondent contends that he was served with an eviction notice, the Applicant has not demonstrated his compliance with the provisions of section 152E of the Land Act to the required standard; he has not annexed a copy of the said eviction notice to his Application. In the absence of the said proof, this court is unable to ascertain the contents of the said notice and the timelines issued thereto and whether the same meets the requirement set out in section 152E above.
12. An eviction order has far reaching implications as it entails the forceful removal of the respondent from a land that he is in occupation of. This court must therefore be satisfied on the compliance with the statutory procedure governing the same. While I do acknowledge that the period given to the Respondent within which to vacate the suit land has since lapsed, I do also acknowledge the need to strictly comply with the statutory provisions before granting the orders sought.
13. I have also noted that the Defendant /Respondent at paragraph 5 and 7 of his Replying Affidavit has sought a period of 4 months to enable him put his house in order and relocate to an alternative parcel of land, in full compliance with the orders of the court issued on July 29, 2022.
14. In view of the foregoing and guided by the provisions of Section 152F (1) of the Land Act; I accordingly find that the Applicant has not met the threshold required to warrant the grant of the orders sought.

Conclusion

15. The upshot of the foregoing analysis is that the Plaintiff/ Applicant's Notice of Motion Application dated March 14, 2023 is not merited and I further direct as follows: -
 - I. The Defendant/ Respondent be and is hereby given 90 days from the date of this Ruling within which to vacate the suit land and in default an Eviction Notice to issue.
 - II. The Applicant be and is hereby ordered to strictly comply with the provisions of section 152E of the Land Act on the issue of Notices.
 - III. Each party to bear their own costs of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 13TH DAY OF JUNE, 2023.

MOHAMMED N KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr Kenyatta for the Plaintiff/ Applicant

No Appearance for the Respondent

