



**Katula & another (Suing as legal representatives and administrators of the Estate of Stephen Katula Muyendi) v Musambayi (Being sued on his own behalf and on behalf of 41 others) (Environment & Land Case 209 of 2017) [2023] KEELC 21147 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21147 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 209 OF 2017  
CA OCHIENG, J  
OCTOBER 30, 2023**

**BETWEEN**

**PIDDAN MUSAU KATULA ..... 1<sup>ST</sup> PLAINTIFF**

**CHRISTINE MUTILE MWANGI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS LEGAL REPRESENTATIVES AND ADMINISTRATORS OF THE  
ESTATE OF STEPHEN KATULA MUYENDI**

**AND**

**SILAS KHAEMBA MUSAMBAYI ..... DEFENDANT**

**BEING SUED ON HIS OWN BEHALF AND ON BEHALF OF 41 OTHERS**

**RULING**

1. What is before Court for determination is the Plaintiffs' Notice of Motion Application dated the 13<sup>th</sup> July, 2023 where they seek the following Orders:-
  1. Spent
  2. That the Defendants be ordered to give vacant possession of the suit premises being Title Number Mavoko Town Block 3/2111 within the next Twenty-One (21) days being that the time which had been granted them by this Court has lapsed.
  3. That in case of failure to vacate the suit premises then the County Commander of Kenya National Police Service in conjunction with the OCPD Athi River and OCS Athi River be ordered to assist in the eviction exercise of the Defendants herein from Title Number Mavoko Town Block 3/2111.
  4. That costs of this Application be awarded to the Plaintiffs.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Piddan Musau Katula where he deposes that this Court issued a Judgment on 31<sup>st</sup> October, 2022 in which it granted the Defendants' a period of one hundred and twenty (120) days to vacate the suit premises or negotiate with the Plaintiffs. He confirms that the Defendants through their Advocates wrote to the Plaintiffs' Advocates after the Judgment that they wanted to negotiate and their Advocates responded to the said letter. He claims the Defendants are no longer interested in the negotiation and time has also lapsed hence they should vacate the suit premises. He insists that there is no justification as to why the Defendants should be allowed to continue occupying the suit premises to their detriment. He reiterates that Court Orders cannot be issued in vain hence they seek eviction orders. Further, that without any negotiations, the Plaintiffs should not be allowed to suffer by being denied the opportunity to invest on the suit land.
3. The Defendants opposed the instant Application by filing a Replying Affidavit sworn by Silas Khaemba who is one of the Respondents. He confirms that they have duly filed an Appeal *vide* CA. E 827/2022. He explains that they have filed an Application for stay and directions have been duly taken. He confirms that the Plaintiffs have duly responded to the said Application. He avers that initially they had made an Application for stay before this Court which directed them to file the same at the Court of Appeal. He insists that allowing the instant Application will render the Application and Appeal nugatory and futile. He reiterates that their right to Appeal will also be curtailed. He states that the hierarchy of the Courts should be respected and the Superior Court be allowed to determine this matter.

### **Analysis and Determination**

4. I have considered the instant Notice of Motion Application including the respective Affidavits and annexures thereon and the only issue for determination is whether the Plaintiffs are entitled to the orders as sought.
5. The Plaintiffs have sought for the Defendants to give vacant possession of the suit premises being Title Number Mavoko Town Block 3/2111 within the next twenty-one (21) days from the date hereof, as the time which had been granted to them by this Court had lapsed. They have further sought assistance of the County Commander of Kenya National Police Service in conjunction with the OCPD Athi River and OCS Athi River to aid in the eviction exercise.
6. I note this Court rendered its Judgment on the 31<sup>st</sup> October, 2022 in favour of the Plaintiffs and issued the following final orders:-
  - i. The Defendants be and are hereby directed to grant the Plaintiffs' vacant possession of land parcel number Mavoko Town Block 3/2111 within one hundred and twenty (120) days, from the date hereof or negotiate fresh terms of the Sale with the said Plaintiffs, failure of which an eviction order do issue.
  - ii. After one hundred and twenty (120) days from the date hereof, a permanent injunction be and is hereby issued restraining the Defendants from trespassing, encroaching, ingressing into, selling, developing, disposing, or in any manner interfering with the Plaintiff's quiet possession and ownership of Mavoko Town Block 3/2111.
  - iii. Each party to bear their own costs.
7. The Plaintiffs claim the Defendants sought to negotiate to purchase suit land but later reneged on the said negotiations. The Defendants insist that they have filed an Appeal against the impugned Judgment being CA. E 827/2022 including an Application for stay in which directions have already been duly



taken. The Respondents confirm that the Plaintiffs have duly responded to the said Application and argue that by allowing the instant Application it will render the Application in the Court of Appeal including the Appeal nugatory.

8. I note this Court already dealt with the Defendants' Application for stay pending Appeal dated the 15<sup>th</sup> February, 2023 vide its Ruling dated the 12<sup>th</sup> April, 2023. From annexure 'SK1' attached to the Replying Affidavit, I note the Court of Appeal did not issue an Order of Stay pending Appeal in respect to the impugned Judgment.
9. At this juncture, I opine that this Court is hence functus officio and cannot block the Plaintiffs from enforcing the Judgment made herein.
10. In the circumstance, I find the instant Notice of Motion Application dated the 13<sup>th</sup> July, 2023 merited and will allow it but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30<sup>TH</sup> DAY OF OCTOBER, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

