



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO.118 OF 1997

M'MUGAMBI M'MARETE.....1ST PLAINTIFF

HENRY KIAMBI2ND PLAINTIFF

AMOS GATOBU 3RD PLAINTIFF

VERSUS

JOYCE GACHERI GATOBU.....DEFENDANT

RULING

Eviction

[1] Before me is an application dated 15th February, 2018 which seeks:

- 1. That Quickline Auctioneers to be empowered to execute this court's order of 31st January, 2018; and to be provided with security by OCS, Meru Police Station, when executing the said order;**
- 2. Lifting of caution placed by the respondent on LR NO NTIMA/IGOKI/5471;**
- 3. Costs of the execution as well as of the application be borne by the Respondent.**

[2] The application is founded upon Order 22 rule 6, 29, 30 and 36 and Order 51 of the Civil Procedure Rules. It is premised on grounds set out in the application, the supporting affidavit and submissions, to wit, that:

- (1) According to the decree of the court, the Respondent was to yield vacant possession of the suit premises within 60 days from date of judgment, i.e. 20th September, 2017. The said period expired on 20th November, 2017 but the Respondent has not vacated the suit premises
- (2) The decree was affixed on the suit premises and notice to vacate was also issued in vain;
- (3) All efforts by the applicants to enter or possess or access the suit premises have been met with hostility from the Respondent's agents or servants.
- (4) Unless the Applicants gain possession of the premises, they will be greatly prejudiced. There is also need for security to be provided when evicting the Respondent.
- (5) The caution registered by the Respondent should also be removed in order for the decree herein to be executed accordingly.

[4] The Respondent and Nilia Kagwiria Gatobu filed separate replying affidavits in opposition to the application. The major arguments are that: (1) the Respondent has filed appeal which is not frivolous; (2) she has applied for stay of execution in Nyeri CA CIVIL APPLICATION NO 5 OF 2018; (3) the stay application is pending *inter parte* hearing and the outcome thereof should be awaited; and (4) the 3rd Applicant is simply bent at evicting his family from the only place they call home and source of their livelihood despite the fact that there is a pending suit by his children.

ANALYSIS AND DETERMINATION

[5] The order sought is eviction of the Respondent from the suit premises. This court ordered in its judgment of 20th September, 2017 that the Respondent shall yield vacant possession of the suit land within 60 days. The Respondent has not done so. The hands of the Respondent are not clean; they are tainted by disobedience. In the absence of stay of execution, the Respondent ought to obey the court order despite its unpleasantness. I agree with Mr. Mutunga that execution of court orders is part of justice and parties must comply. This is what Ringera J (as he then was) used to call pain of justice. Accordingly, there is merit to and I hereby authorize Quickline Auctioneers to evict the Respondent but within the parameters and decency required by law. As it has been stated that the Respondent and her servants have used force to circumvent execution of court order, I direct the OCS, Meru Police Station to provide security in this exercise. I also order removal of the caution placed by the Respondent on the suit property for purpose of execution of the decree herein. No orders as to costs. It is so ordered.

Dated, signed and delivered in Meru in open court this 29th day of May, 2018.

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F. GIKONYO

JUDGE

In the presence of:

M/s. Mwarania advocate for Mutunga advocate for plaintiff.

Ashaba advocate for Respondent.

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F. GIKONYO

JUDGE