



REPUBLIC OF KENYA



KENYA LAW
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**Mugumo v Kingi & 2 others (Environment & Land Case 10 of 2021)
[2023] KEELC 21982 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21982 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 10 OF 2021
AK BOR, J
NOVEMBER 22, 2023
(FORMERLY NYERI ELC CASE NO. 75 OF 2017)**

BETWEEN

JOSEPH KINYUA MUGUMO PLAINTIFF

AND

MARGARET MUTHONI KINGI 1ST DEFENDANT

LAND REGISTRAR NANYUKI COUNTY 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The Plaintiff filed the application dated 11/9/2023 seeking an order for the eviction of the 1st Defendant from the land known as Nanyuki Municipality Block 7/257 and delivery of vacant possession. He sought to have Nasioki Auctioneers execute the eviction orders which he sought under Section 152 A, E and F of the *Land Act*. He sought to have the Officer Commanding the Matanya Police Station offer security during the eviction exercise.
2. The application was based on the grounds that this court delivered judgment in favour of the Plaintiff on 6/6/2023 which had not been reviewed or set aside. The Plaintiff expressed his desire to take vacant position of land he described as Laikipia/Nanyuki/West Timau Block 2/18 (Matanya Marura). He contended that the 1st Defendant had refused to vacate the land despite request to do so. The Plaintiff swore the affidavit in support of the application.
3. The 1st Defendant opposed the application through her replying affidavit filed in court 28/9/2023. She urged that the application was res judicata since the suit was concluded on 6/6/2022. She annexed a copy of the Originating Summons filed by the Plaintiff where he gave the land reference as Laikipia/



- Nanyuki/ West Timau Block 2/618 (Matanya Marura) and contended that in that suit, the Plaintiff did not concede that she was in occupation of the suit land.
4. Further, the 1st defendant contended that the Plaintiff having executed the decree of the court and having been registered as the owner of the suit land, this court could not reopen the matter. She relied on the copy of the green card relating to the suit property confirming the transfer. She averred that she had lodged Nyeri Civil Appeal No E085 of 2022 against the judgment of this court. She urged the court to dismiss the Plaintiff's application.
 5. The court directed parties to file written submissions. In his submissions, the Plaintiff indicated that he erroneously gave the parcel number as Nanyuki Municipality Block 7/257 and sought to correct this to read Laikipia/ Nanyuki/West Timau Block 2/18 (Matanya Marura).
 6. He cited Section 152E of the *Land Act* and submitted that the 1st Defendant had erected a house on the suit land and that he wished to have it removed or demolished so that he could take vacant possession of the suit land. He surmised that the 1st Defendant may become hostile unless police were deployed to provide security and maintain peace during the eviction exercise.
 7. The 1st Defendant submitted that the Plaintiff was seeking her eviction and vacant possession of a different parcel of land being Nanyuki Municipality Block 7/257 yet the suit property was Laikipia/ Nanyuki/West Timau Block 2/618 (Matanya Marura). She argued that the Plaintiff was seeking eviction orders in relation to a parcel of land which was not the subject matter of the litigation. She contended that it was irregular for the Plaintiff to attempt to correct the description of the suit property in the written submissions while arguing that the error cut deeply into the substratum of the application which could not be remedied through submissions.
 8. The 1st Defendant relied on Section 7 of the *Civil Procedure Act* and went on to add that the Plaintiff did not pray for eviction in the suit and that the trial court did not make a determination on her eviction from the suit land.
 9. The issue for determination is whether the court should grant the orders sought by the Plaintiff.
 10. Looking at the judgment which this court delivered on 6/6/2022, it relates to the land known as Laikipia/Nanyuki/West Timau Block 2/618 (Matanya Marura). Prayer number 2 of the Plaintiff's application dated 11/9/2023 refers to Nanyuki Municipality Block 7/257 while the grounds on the face of the application describes the suit land as Laikipia/Nanyuki/West Timau Block 2/18 (Matanya Marura). The Plaintiff submitted that he wished the land description corrected to read Laikipia/ Nanyuki/West Timau Block 2/18 (Matanya Marura).
 11. Owing to the discrepancies in the description of the suit land from which the Plaintiff wishes to evict the 1st Defendant, it would be improper for the court to issue orders for eviction sought by the Plaintiff due to the fact that the land in respect of which the court entered judgment is different from the land from which the Plaintiff seeks to evict the 1st Respondent.
 12. The court declines to grant the orders sought in the application dated 11/9/2023. Each party will bear its costs.

DELIVERED VIRTUALLY AT NANYUKI THIS 22ND DAY OF NOVEMBER 2023.

K. BOR

JUDGE

In the presence of: -



Mr. Joseph, the Plaintiff

Ms. Emily Miano for the 1st Defendant

Ms. Stella Gakii- Court Assistant

No appearance for the 2nd and 3rd Defendants

