



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL CASE NO. 120 OF 2006

**IN THE MATTER OF LAND PARCEL NO. KERICHO/NYAMANGA/339 (Now sub-divided into
KERICHO/NYAMANGA/651, 652 AND 653)**

WILLY KIPKEMOI KIGEN.....APPLICANT

VERSUS

CHARLES KIPLANGAT BOSUBEN.....RESPONDENT

RULING

By an application dated 8th May 2017 brought pursuant to Order 22 Rule 20 of the Civil Procedure Rules, the applicant seeks the following orders:

- a) ...Moot**
- b) That the ruling issued by this Honourable court on 28th October 2016 be complied with to the full extent.**
- c) That an eviction order be issued to remove the Respondent, his agents and/or servants or any persons claiming under him from land parcel number KERICHO/NYAMANGA/653.**
- d) That the OCS Litein Police Station do ensure compliance with the Order of eviction issued herein.**
- e) That the costs of this application be provided for.**

The application was served on the respondent's advocates on 16th May 2017 but no Replying Affidavit or Grounds of Opposition had been filed at the time the application came up for hearing on 30th May 2017. Neither the Respondent nor his advocate attended court on the said date and counsel for the applicant proceeded to argue the applicant's application.

The background of this case is that the applicant herein (Plaintiff) filed suit against the Respondent (defendant) vide Kericho HCCC No. 12 of 2006 seeking an order of eviction against the Respondent and a permanent injunction restraining the Respondent from the suit land. In his plaint, the applicant alleged that the Respondent had trespassed onto the suit land and continued to occupy a portion of it without the applicant's consent.

In another suit Kericho HCCC No. 120 of 2006 filed in December 2006, the Respondent took out an Originating Summons pursuant to Order XXXVI Rules 3, 3D (currently Order 37 Rule 7 of the Civil

Procedure Rules) seeking that he be declared to have been entitled to 10.25 acres out of all that parcel of land known as KERICHO/NYAMANGA/ 339 , now sub-divided into KERICHO/NYAMANGA/651,652 and 653 by virtue of adverse possession and that he be registered as proprietor thereof in place of the applicant in the instant suit , Elizabeth Tongoi and Esther Chelangat Tongoi who were registered as the proprietors inter alia.

The two suits which touched on the same parties and the same subject matter were consolidated and heard between May and July 2016 by way of viva voce evidence. Justice Sila Munyao then delivered his judgment on 28th October 2016, dismissing the Originating Summons and entering judgment for the Plaintiff in HCCC No. 12 of 2006 (Willy Kipkemoi Kigen) against the defendant (Charles Kiplangat Bosuben). The court gave Charles six months to get alternative accommodation and move out of the suit land failing which the applicant (Willy Kipkemoi Kigen) would be at liberty to formally apply for an eviction order.

This application therefore merely seeks an eviction order pursuant to the judgment of this honourable court. In his supporting affidavit, the applicant depones that despite being aware of the judgment and the six months' period having elapsed, the respondent has refused to vacate the suit land.

I have read the application, supporting affidavit, pleadings in both HCCC No.12 of 2006 and HCCC No 120 of 2006 together with the judgment in respect of the two suits delivered on 28.10.2016. I have also considered the submissions of counsel for the applicant and I have no reason to deny the applicant from enjoying the fruits of his judgment. I therefore allow the application and direct as follows:

a) That an eviction order be and is hereby issued evicting the Respondent, his agents and/or servants and/or anyone claiming under him from land parcel number KERICHO/NYAMANGA/653 within 30 days from the date hereof.

b) That the Officer Commanding Station, Litein Police Station do ensure compliance with the eviction order issued herein

The costs of this application shall be borne by the Respondent.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 22ND DAY OF SEPTEMBER 2017.

J.M ONYANGO

JUDGE

IN THE PRESENCE OF

Kiprono for Joshua Mutai for the Applicant

No appearance for the Respondent

C/A; Rotich