



Kimene (Being Sued on Behalf of the Estate of Isaac Kimene Nabea alias Isaac Gituma Nabea) v Murithi alias M'inoti Kiautha (Environment and Land Appeal E021 of 2023) [2023] KEELC 22092 (KLR) (11 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22092 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E021 OF 2023
CK NZILI, J
DECEMBER 11, 2023**

BETWEEN

**PATRICK KIMENE APPELLANT
BEING SUED ON BEHALF OF THE ESTATE OF ISAAC KIMENE NABEA
ALIAS ISAAC GITUMA NABEA**

AND

STEPHEN MURITHI ALIAS M'INOTI KIAUTHA RESPONDENT

RULING

1. On 31.5.2023, this court stayed the execution of the decree issued pursuant to the judgment dated 1.3.2023, whose effect was to replace the names of the appellant in the register for LR No. Nyaki/Kithoka/334.
2. The conditions for stay were to deposit Kshs.50,000/= and surrender the original title deed before the Deputy Registrar of this court.
3. The two conditions were met as per Receipt No. DAK – 0002355 and a letter dated 8.6.2023. While aware of this the decree-holder moved the trial court by an application dated 11.9.2023, to seek for vacant possession. Vide a ruling dated 22.11.2021, the trial court allowed the application on the basis that the stay orders had elapsed by effluxion of time. An eviction process must abide by the law on eviction. See *Mitu-Bell Welfare Society vs Kenya Airports Authority & 2 others* Petition 3 of 2018 (2021) KESC 34 (KLR) (11th January, 2021) (Judgment).
4. The ruling must have been made out of an error apparent on the face of the record. The decree-holder never applied for review on setting aside of the stay orders for non-compliance.



5. Strangely the decree holder has not refuted the averments on oath in the supporting affidavits sworn by Patrick Kimene Nabea in support of the applications dated 24.11.2023 and 1.12.2023.
6. Court orders are not made in vain and a party who takes advantage of court processes and unjustly enriches himself without following the law has to face the consequences. See *Republic vs County Chief Officer Finance and Economic Planning Nairobi City County Exparte David Mugo* (2018) eKLR and *Macharia Mwangi Maina & 87 others vs Davidson Mwangi Kagiri* (2014) eKLR.
7. The upshot is I find the execution process initiated by the decree-holder was illegal. Any entry into and changes to the subject land remain nullities. The applicant is at liberty to seek damage for the loss or damage occasioned.
8. The stay orders remain in force and therefore the court does not require to issue any further orders. The up short is I find the two applications superfluous otherwise the applicant should have applied for contempt of court. The *status quo* as of 31.5.2023 remain in place.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 11TH DAY OF DECEMBER 2023

HON. C K NZILI

JUDGE

In presence of;

C.A Kananu/Mukami

Mr. Igweta for the applicant

Appellant

