



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

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Kanyia (Suing as Legal Representative & Administrator of the Estate of the Late Haron Kanyia Makau) v Wega & 4 others (Environment and Land Case Civil Suit 1160 of 2015) [2023] KEELC 22176 (KLR) (8 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22176 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 1160 OF 2015
MD MWANGI, J
DECEMBER 8, 2023**

BETWEEN

**STEPHEN MAKAU KANYIA PLAINTIFF
SUING AS LEGAL REPRESENTATIVE & ADMINISTRATOR OF THE ESTATE
OF THE LATE HARON KANYIA MAKAU**

AND

**WILSON NJERU WEGA 1ST DEFENDANT
JOYCE NJOKI MWANGI 2ND DEFENDANT
NEHEMIAH TURUTHI KARANJA 3RD DEFENDANT
CYPRIAN KITHURI ARITHO 4TH DEFENDANT
EURETHER KARIMI PHARIS 5TH DEFENDANT**

RULING

1. On October 26, 2021 this court entered Judgement in favour of the Plaintiff issuing orders among others, an eviction Order directed to the defendants ordering them to vacate the plaintiff's parcel of land known as Nairobi/Block 1118/1079.
2. The Defendants have now moved this court vide the application dated May 25, 2023 for orders that;
 - a. This Honourable Court be pleased to grant the Defendants twelve (12) months to vacate the parcel of land known as Nairobi/Block 1118/1079 in compliance with the Judgement herein.
 - b. That costs of this application be provided for.



3. The application is premised on the grounds on the face of it and the supporting affidavit of Wilson Njeru Wega, the 1st Defendant herein, deposed on the May 25, 2023. The deponent avers that he has the authority to swear the affidavit on behalf of the other Defendants.
4. The deponent states that he lives on the suit property alongside the other Defendants where they have built their homes. He avers that they purchased their respective plots from a person purporting to be the owner of the suit property only to find out that he was a fraudster.
5. He further avers that they engaged the Plaintiff with a view to purchasing the land and compensating him for the unintended trespass to the land. The negotiations went on even after judgement was entered. Unfortunately, the said engagements have not been fruitful as the Defendants were unable to agree on the value of the property and are now ready to vacate the land.
6. The Defendants pray that they be granted reasonable time to demolish their homes and secure alternative accommodation for their families. Hence the instant prayers sought herein.

Replying Affidavit

7. The application was opposed by the Plaintiff, Stephen Makau, who filed a Replying Affidavit deposed on the October 27, 2023. The Plaintiff avers that he is the Administrator of the Estate of the late Harun Kanyia Makau (deceased). He avers that the Judgement delivered herein on October 28, 2021 has not been contested or challenged in any way. No appeal was ever preferred.
8. The Plaintiff states that the Defendants have continued to occupy the Suit premises for a period of 2 years now after the delivery of the Judgement without payment of any money in terms of mesne profits to the Plaintiff.
9. He asserts that he offered the Defendants a chance to purchase the property but the offer was not accepted. As such, the Defendants have no reason to continue occupying the suit premises. He maintains that the judgement issued herein should be complied with by the Defendants who should vacate the premises to enable the Plaintiff enjoy the fruits of his judgement.
10. The Plaintiff contends that the Defendants' continued occupation without compensation amounts to an unjust advantage over the Plaintiff who has been denied from benefitting from his land. He argues that the duration the Defendants have been in occupation of the land since the delivery of the judgement is more than enough time and should therefore not be extended.
11. He states that he has been reasonable and accommodated the Defendants for a reasonable time; which time was sufficient for the Defendants to find alternative accommodation or land. As such, the application should therefore be dismissed with costs.

Court's directions

12. The Court directed that the application be canvassed by way of written submissions. The Plaintiff complied and filed his submissions dated November 23, 2023. The Defendants who were the Applicants did not file their written submissions.

Issues for determination

13. Having considered the application, and the response by the Plaintiff as well as the written submissions filed, the issues for determination in this Court's opinion are as follows; -
 - a. Whether the Defendants' application is merited;



- b. Who should bear the costs of the application.

Analysis and determination

A. Whether the Defendants application is merited;

14. It is not in dispute that this court entered Judgement in favour of the Plaintiff on October 26, 2021. The court found the Plaintiff to be the rightful proprietor of the suit property and directed the Defendants to vacate the land. There is no pending appeal against the said judgement. It is now more than two years since the delivery of the judgement but the Defendants are yet to vacate the suit premises as directed.
15. It is my considered view that the Defendants have had sufficient time within which to make arrangements for relocation; more than two years now. I see no justifiable reason to exercise the court's discretion in their favour.
16. Ultimately therefore, the Defendants' Notice of Motion application dated May 25, 2023 is declined. The same is dismissed with costs to the Plaintiff.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF DECEMBER 2023

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Muthama for the Defendants'/Applicants.

N/A for the Plaintiff/Respondent.

