



REPUBLIC OF KENYA



**Omwayo v Otumba & another (Environment & Land Case  
47 of 2021) [2023] KEELC 22137 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22137 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 47 OF 2021**

**E ASATI, J  
DECEMBER 7, 2023**

**BETWEEN**

**NOAH ONYANGO OMWAYO ..... PLAINTIFF**

**AND**

**SYLVANUS O OTUMBA ..... 1<sup>ST</sup> DEFENDANT**

**BENARD M OTUMBA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 7<sup>th</sup> October 2021 brought by the Plaintiff under the provisions of Order 51 Rule 1 and sections 1A & 1B [Civil Procedure Act](#), seeking for orders that: -
  - a. An order do issue directing that the Respondents vacate land parcel number Kisumu/Konya/167, in default the eviction be done by court bailiffs and/or auctioneers.
  - b. An order do issue directed at the In-charge Administration Central police station to provide security to the Plaintiff to undertake the lawful process of evicting the Defendants and demolishing illegal structures erected on the suit parcel of land being No. Kisumu/Konya/167
  - c. The Defendants to bear the costs of the entire exercise.
  - d. The cost of this application be provided for.
2. The grounds upon which the application was brought were that the Defendants were served with the decree herein to the effect that they vacate the suit land but have failed to vacate. The period the Defendants were given to vacate has elapsed and it is in the interest of justice that the orders sought be granted. The application was supported by the averments in the Supporting Affidavit and the annexures thereto.



3. The Application was opposed *vide* the contents of the Affidavit sworn by the Defendants jointly on 22<sup>nd</sup> July 2023. The Defendants contended that the Plaintiff's records of land parcel No. Kisumu/Konya/167 and 166 differs with the actual land of Otumba Osiri on the ground, that the court awarded all of them land parcel Nos. Kisumu/Konya/167 and 166 as it was found that the land belonged to Otumba Osiri. That the Plaintiff did not prove purchase of the land. That there is parcel No. 6785 created from land parcel No. Kisumu/Konya/167 but not shown on the ground. That in this case, the Plaintiff's bid is to shift the boundary between parcel No. Kisumu/Konya/167 and 166 into parcel No. 166. That land parcel No. 166 measures 0.32 Ha. The Defendant prayed for another site visit by the Land Registrar with surveyors accompanied by court representatives so as to ascertain the area for the two parcel No.s Kisumu/Konya/167 and 166. That the court should review the Judgment after making findings on the ground. The Defendants requested the court to revoke all the title deeds in the Plaintiff's name and revert them back to the name of Otumba Osiri. That the plaintiff should tell the court how he got the ownership without their knowledge.
4. The application was argued orally on 3<sup>rd</sup> October 2023. Counsel for the applicant submitted that there is a decree and that there is no successful appeal against that decree. That the plaintiff should be allowed to enjoy the fruits of the judgment. That the defendants have been reluctant to vacate. That because the situation is volatile, Counsel sought for an order that police provide security during the exercise.
5. The Respondents submitted that the land the plaintiff seeks is not available on the ground. That it only exists on paper. That nobody knows where the land is and that all the averments in the application are untrue. That the court should have gone to the site to see the land physically. That surveyors should visit the site.
6. To the Affidavit in Support of the application was annexed a copy of the decree dated 25<sup>th</sup> day of March, 2020 and issued on 29<sup>th</sup> October 2020. The decree was for: -
  - a. "An order declaring that land title Kisumu/Konya/167 is owned solely by the plaintiff
  - b. A mandatory injunction is hereby issued restraining the Respondents, their servants, or agents, or any other person or entity acting under the Respondents instructions or on their behalf from trespassing upon the plaintiff's parcel of land and/or wasting or interfering with the land the plaintiff land parcel No. Kisumu/Konya/167
  - c. The Plaintiff is hereby awarded costs of the suit"
7. The Plaintiff/Applicant has deposed that the Defendants/Respondents have refused to vacate the suit property in spite of the decree. The Respondents' defence to this is that the suit land does not exist on the ground. They do not deny that they occupy the land. They do not deny existence of the decree in which the land was declared to be belonging to the Plaintiff. No appeal or any other challenge has been undertaken against the decree.

I find that the application has merit and allow it as follows: -

- a. The Respondent to vacate and hand over vacant possession of the suit land herein No. Kisumu/Konya/167 to the Plaintiff within the next 60 days hereof and in default an order of eviction is hereby issued for the removal of the Respondents from the suit land after expiry of the 60 days of the date hereof as by law provided.
- b. The OCS Kisumu Central Police station to provide security during the exercise of eviction of the Respondents from the suit land parcel No. Kisumu/Konya/167.
- c. Costs to the Applicant.



Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 7<sup>TH</sup> DAY OF DECEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

Raburu for the Plaintiff/Applicant.

Both Respondents present in person

