



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KILGORIS**

**FORMERLY NAROK ELC CASE NO. 28 OF 2019**

**ELC CASE NO. 1 OF 2022**

**NTARA OLE OLOIBOR.....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**MUSANA OLE MASOI.....DEFENDANT/DECREE DEBTOR**

**RULING**

The Application before the Court is the Notice to Show Cause why execution should not issue Under Order 21 Rule 18 (1) (a) of the Civil Procedure (Revised Rules.) dated 23<sup>rd</sup> November 2021.

The Notice To Show Cause was applied by the Plaintiff/Decree Holder against the Defendant/Decree Debtor pursuant to a judgment and decree of the Court dated 28<sup>th</sup> October 2019.

The Notice To Show Cause why execution should not issue dated 22<sup>nd</sup> November 2021 was duly served on the Defendant/Debtor who appeared in court on the date of the hearing in person.

The Defendant/Judgment Debtor had not filed any response to the Notice to Show Cause why Execution should not issue dated 22<sup>nd</sup> November 2021.

Counsel for the Plaintiff/Decree Holder submitted that this Application of Notice To Show cause why Execution should not be issued was necessitated by the delay in executing the judgment which was issued on the 28<sup>th</sup> October 2019.

Consequently therefore, the law requires that if a judgment has not been executed for a period of more than One year since its pronouncement, a successful party is required to comply with the provisions of Section 22 Rule 18 (1)(a).

According to the Court records, the judgment and Decree was issued on the 28<sup>th</sup> October 2019.

Indeed, the Judgment and Decree issued on the 28<sup>th</sup> October 2019 has not been executed for a period of more than One Year.

Similarly, the Defendant/Judgement Debtor has also not challenged the said Judgment and/or Decree dated 28<sup>th</sup> October 2019 so far.

According to the Ground Report by the Mr. S.W. Githinji, Land Registrar, Transmara West/East, it is clear that the Defendant/Judgment Debtor occupies the property known as TRANSMARA/KIMINTET D/490.

The Judgment delivered by trial Judge on the 28<sup>th</sup> October 2019 concluded this dispute with a pronouncement that the Plaintiff/Decree Holder is the absolute owner of the Parcel known as TRANSMARA/KIMINTET D/490.

At the hearing of this Application of Notice to Show Cause, the Defendant/Judgment Debtor did not offer any valid reason as to why he has not complied with the Judgment and Decree of 28<sup>th</sup> October 2019.

The Defendant/Judgment Debtor simply stated that he was the owner of where he stays, an issue that has already be determined.

In the circumstances, I do not find any valid reason as to why the Plaintiff/Decree Holder should be denied the fruits of his judgment.

I therefore allow the Application For Execution of the Decree dated 22<sup>nd</sup> November 2021 and Order as follows:-

1. An eviction Order be and is hereby granted for the forceful eviction of the Defendant/Judgment Debtor as regards the property known as TRANSMARA/KIMINTET "D" /490 in execution of the Judgment delivered on the 28<sup>th</sup> October 2019.
2. The execution of the above Eviction Orders shall be undertaken by Omwoyo Auctioneers in their duties as Licensed Court bailiffs.
3. The Officer In Charge of Lolgorian Police Station shall provide the appropriate Police Assistance if need be.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 15<sup>TH</sup> DAY OF FEBRUARY, 2022**

**EMMANUEL. M. WASHE**

**JUDGE**

**In the Presence of :**

Court Assistant: Ngeno

Counsel for the Plaintiff: O.M. Otieno

Counsel for the Defendant: N/A