



**Muturi v Hamza (Environment & Land Case 151 of 2018)
[2025] KEELC 3404 (KLR) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3404 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 151 OF 2018**

MD MWANGI, J

APRIL 23, 2025

BETWEEN

SAMUEL KUNG’U MUTURI APPLICANT

AND

HADIJA HAMZA RESPONDENT

RULING

(In respect of the notice of motion dated 12th June 2024 brought pursuant to the provisions of Order 9 rule 9, Order 22 rule 28 (5) of the [Civil Procedure Act](#) and all enabling provisions of the law).

Background

1. Judgment in this matter was delivered on 8th June 2022 in favour of the Plaintiff against the Defendant. The court declared the Plaintiff to be the rightful owner of Plot No. 502 Residential Bulbul Trading Centre. The court further issued a permanent injunction in his favour restraining the Defendant either by herself, her employees, servants and or agents from trespassing into, entering onto, committing acts of waste, alienating and or interfering with the Plaintiff’s quiet and peaceful occupation of the suit premises. The Plaintiff too was awarded the costs of the suit.
2. In the application dated 12th June 2024, the Plaintiff/Applicant substantively prays for an order of eviction of the Defendant/Respondent or any other person claiming through her from the suit premises in terms of the judgment of the court. The Plaintiff further prays that the OCS, Ngong Police Station be ordered to ensure compliance of the order of eviction.
3. The Plaintiff’s advocates sought an order that they be granted leave to come on record for the Plaintiff in place of the previous advocates. I note that a consent was duly recorded with the previous advocates allowing the advocates to take over the matter. The consent dispenses with the issue in terms of the provisions of Order 9 of the Civil Procedure Rules.



4. The basis of the Plaintiff's application is that the Defendant has failed to comply with the judgment/decree of the court by resisting attempts by the Plaintiff to take possession of the suit property.
5. The Defendant has not opposed the application which was duly served through her advocates on record.

Submissions by the Applicant

6. The Plaintiff/Applicant filed submissions dated 21st August 2024 in support of his application. The Applicant asserted that Section 38 of the *Civil Procedure Act* gives the court the power to order execution of a decree in such manner as the nature of the relief granted may require.

Determination.

7. Order 22 rule 28 (5) of the Civil Procedure Rules provides that,

“Where a decree for specific performance or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that any act required to be done may be done so far as practicable by the decree holder, or some other person appointed by the court, at the costs of the judgment debtor and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.”
8. I agree with the submission of the Plaintiff/Applicant, that the order of permanent injunction issued in this case is both prohibitory and mandatory. It prohibits the Defendant from trespassing onto and entering onto the suit property and further bars her from interfering with the Plaintiff's quiet and peaceful possession of the suit property.
9. Courts do not issue orders in vain and the Defendant like any other person is obligated to obey court orders at all times by complying with the judgment and decree of this court. The nature of the order issued in this case as observed by the court in the case of Grace Maundu Kilungya –vs- Matheka Makuthi & another (2019) eKLR, is in effect a prohibitory and mandatory injunction for the eviction of the Defendant from the suit premises.
10. Whereas there was no direct prayer for the eviction of the Defendant from the suit premises, the judgment and decree of the court can only be effected by the eviction of the Defendant from the suit premises. Eviction of the Defendant is the appropriate way of execution of the decree of the court.
11. Consequently, and in accordance with the provisions of section 38 of the *Civil Procedure Act*, I allow the prayer for the eviction of the Defendant and or any person claiming through her from the suit premises Plot No. 502 Residential Embulbul Trading Centre forthwith.
12. The OCS, Ngong Police Station is ordered to supervise the eviction of the Defendant from the suit premises, Plot No. 502 Residential Embulbul Trading Centre and ensure the maintenance of peace and order during the exercise.
13. The Plaintiff/Applicant is granted the costs of this application.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 23RD DAY OF APRIL 2025.

M.D. MWANGI



JUDGE

In the virtual presence of:

Mr. Obunde for the Plaintiff/Applicant

Ms. Akinyi h/b for Mr. Yusuf for the Defendant/Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

