



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Murutu v Eshitera (Environment & Land Case 19 of 2015)  
[2022] KEELC 3380 (KLR) (30 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3380 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 19 OF 2015**

**DO OHUNGO, J**

**MAY 30, 2022**

**BETWEEN**

**MARITINA AORO MURUTU ..... PLAINTIFF**

**AND**

**JAMES AMUKHOYE ESHITERA ..... DEFENDANT**

**RULING**

1. Judgment was delivered in this matter on 23<sup>rd</sup> March 2021 as follows:
  1. The defendant, his relatives, servants and/or agents to vacate the suit land parcel No. N/Wanga/Namamali/889 within the next 6 (six) months from the date of this judgement and in default eviction order to issue forthwith.
  2. Each party to bear its own costs.
2. The plaintiff later filed Notice of Motion dated 7<sup>th</sup> January 2022, which is the subject of this ruling. The application seeks the following orders:
  - (a) That James Amukhoye Eshitera, his family, servants or any other person claiming through him be evicted from land parcel L.R No. North/ Wanga/Namamali/889.
  - (b) That the OCS Mirere police station or the nearest police station/post do provide security.
  - (c) That the court do make such just orders in the circumstance.
  - (d) That costs be provided for.
3. The application is supported by an affidavit sworn by the plaintiff. She deposed that upon delivery of the judgment, she approached the defendant on several occasions asking him to voluntarily give vacant possession but he declined. She added that there is no appeal pending against the judgment and that there is no order of stay of execution in force.



4. In response, the defendant filed a replying affidavit in which he deposed that he has filed another case being Kakamega ELCOS No. E001 of 2021 and the if the present application is allowed, it would render Kakamega ELCOS No. E001 of 2021 nugatory.
5. The parties' counsels relied entirely on the material on record and urged the court to render a ruling.
6. I have considered the application, the affidavits and submissions of counsel. There is no dispute that judgment was delivered in this matter on 23<sup>rd</sup> March 2021 as captured above. The 6 months within which the defendant was to vacated lapsed on 23<sup>rd</sup> September 2021. There is no order of stay of execution on record. In those circumstances, there is no valid reason to keep the plaintiff from the fruits of her judgment. Existence of a separate suit, one filed long after delivery of the judgment, cannot be a bar to execution in this matter.
7. In view of the foregoing, I find merit in Notice of Motion dated 7<sup>th</sup> January 2022. I therefore make the following orders:
  - a) James Amukhoye Eshitera (the defendant herein), his family, servants or any other person claiming through him be evicted from land parcel L.R No. North/ Wanga/Namamali/889.
  - b) The OCS Mirere Police Station or the nearest police station/post do provide security during enforcement of the above order.
  - c) No order on costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF MAY 2022.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the plaintiff

Defendant present

Counsel for the defendant absent

Court Assistant: E. Juma

