



Cheruiyot v Deputy County Commissioner Muhoroni (Petition E002 of 2022) [2022] KEELC 2947 (KLR) (13 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2947 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
PETITION E002 OF 2022**

A OMBWAYO, J

MAY 13, 2022

**IN THE MATTER OF ARTICLES 2(2),10(2),19,20(2),21(1),22 (1)
& (2), 23 (1),40(2),47 (2) ,50(1) AND 165 OF THE
CONSTITUTION OF KENYA,2010**

AND

**IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT OF THE
PROPERTY RIGHTS OF THE PETITIONER**

AND

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF
2012**

AND

IN THE MATTER OF FAIR ADMINISTRATION ACT, 2016

AND

IN THE MATTER OF LR NO. KISUMU/FORT TERNAN

488,489,491,492 &494

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AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS & FUNDAMENTAL FREEDOM)**

PRCATICE AND PRODURE RULES 2013

BETWEEN

HERIZON KIMELI CHERUIYOT PETITIONER



AND

DEPUTY COUNTY COMMISSIONER MUHORONI RESPONDENT

RULING

1. Hezron Kimeli Cheruiyot, the Petitioner herein filed a Notice of Motion Application on 10th February 2022 under Rule 3(1) & (2) of the High Court (Practice and Procedure) Rules and Rules 24(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 seeking for the following orders:
 1. That this Application be certified as urgent and service thereof be dispensed with in the first instance.
 2. That an order of prohibition be hereby issued directing the Respondent, their agents or anyone authorized or acting under their authority to stay their holding that the Petitioner should vacate land parcels Kisumu Fort Ternana 488,489,491,492 &494 pending hearing and determination of this Application.
 3. That an order of prohibition be hereby issued directing the Respondent, their agents or anyone authorized or acting under their authority to stay their holding that the Petitioner should vacate land parcels Kisumu Fort Ternana 488,489,491,492 &494 upon hearing and determination of this application.
 4. That costs of this Application be provided for.
2. The Application was based on grounds that the holding by the Deputy County Commissioner that the Petitioner should vacate the suit properties noting that the same are subject to ongoing cases before courts with competent jurisdiction is unprocedural and is unfounded in law and fact.
3. That the office of the Deputy County Commissioner has no authority to issue eviction orders in the issues at hand which are being held by courts with competent jurisdiction. That the Petitioner will be prejudiced if the holding by the Office of the Deputy County Commissioner is allowed to stand as the same would occasion a loss of their properties.
4. It was stated that the Application has been made without any unreasonable delay and it ought to be granted in the interest of equity and justice and the Respondent will not be prejudiced in any way if the orders sought are granted.
5. The Application was supported by the Affidavit of Hezron Kemeli Cheruiyot who deposed and stated that the Respondent issued communication to the Petitioner to the effect that he should vacate the suit properties which he has occupied for more than 10 years and developed. That the suit properties are subject matters in the ongoing matters Kisumu ELC 45 OF 2020 and Tamu ELC E005 of 2021.
6. He stated that as per the court ruling delivered on 30th July 2021 in regards to Kisumu ELC 45 of 2020, the court issued orders of status quo restricting any of the parties from dealing with the property in the land registry and interfering with the status quo on the ground pending hearing and determination of the suit. That a further contempt application was filed against him in relation to the ruling and the same was dismissed.
7. It was stated that the holding by the Deputy County Commissioner that he should vacate the suit properties noting that the same are subject to the ongoing cases before the courts with competent



jurisdiction is unprocedural and is unfounded in law and fact. He further stated that the Deputy County Commissioner has no authority to issue eviction orders in regards to the suit properties which are subject to the ongoing cases.

8. He stated that he will be prejudiced if the holding of the Office of the Deputy County Commissioner is allowed to stand as the same would occasion loss of their properties.
9. This Application was placed before me on 14th February 2022 where the Petitioner was directed to serve the Application within two days and the matter was to be heard on 24th March 2022. On 24th March 2022 when the matter came up for hearing, this court ordered the Respondent to file a Reply within 14 days, the Applicant to file and serve a supplementary Affidavit with submissions within 14 days and the Respondent to file submissions within 14 days.
10. I have perused the file and do confirm that parties failed to comply with the orders issued on 24th March 2022. However, the Respondent herein filed grounds of opposition on 1st April 2022 on grounds that the Application is defective, the allegations therein have not been supported, it is trite law that he who alleges must prove beyond reasonable doubt and that a party to a suit must demonstrate prima facie evidence.
11. This court has looked into the Application and finds that the same lacks merit as the Petitioner herein has failed to prove the allegations that the Respondent held that he was to vacate the suit properties as no evidence has been adduced to support the said allegations. In the upshot this Application is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF MAY, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

