



REPUBLIC OF KENYA



KENYA LAW
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Abuto & 13 others v Muka Mukuu Farmers Co-operative Society Limited (Environment & Land Case 144 of 2014) [2022] KEELC 3817 (KLR) (28 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 144 OF 2014
CA OCHIENG, J
JUNE 28, 2022**

BETWEEN

MOSES ABUTO 1ST PLAINTIFF
FELISTA NJERI NGURE 2ND PLAINTIFF
FRANCIS MBAO 3RD PLAINTIFF
JULIANA MUTHUE MUGAMBI 4TH PLAINTIFF
KIMANI MAGAMBO 5TH PLAINTIFF
FELISTA NDUNGE 6TH PLAINTIFF
KALONDU NYAMBO 7TH PLAINTIFF
RICHARD NGAU MWANGANGI 8TH PLAINTIFF
ZADOK ORIENO 9TH PLAINTIFF
BONIFACE MUTUNGA 10TH PLAINTIFF
JOHN MULA NZUMA 11TH PLAINTIFF
JACKSON MUTUKU KAVOI 12TH PLAINTIFF
FREDRICK MUTHYA MULIKA 13TH PLAINTIFF
THOMAS MUNYAO MUMO 14TH PLAINTIFF

AND

**MUKA MUKUU FARMERS CO-OPERATIVE SOCIETY
LIMITED DEFENDANT**



RULING

1. What is before court for determination is the defendant's notice of motion application dated the June 24, 2021 where they seek the following orders:
 1. That the court decree issued pursuant to the Judgment delivered on January 29, 2021 with regard to forceful eviction be enforced and executed by the Officer Commanding Police Station (OCS) Donyo Sabuk Police Station, Machakos County.
 2. That the costs of this application be provided.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Peter Nguli Mulili who is the defendant's Vice Chairman. He confirms that on January 29, 2021 the court delivered judgment in their favour. He avers that to date, the respondents in blatant violation of the said decree have failed, refused and/or neglected to vacate and render vacant possession of the suit property. He reiterates that they should be allowed to enjoy the fruits of their Judgment and hence seeks an order of the court to issue to the Officer Commanding Police Station (OCS) Donyo Sabuk Police Station, to execute the Judgment herein by evicting the respondents, their agents and/or trustees from the suit land as well as the resultant plots.
3. In opposition to the instant application, the plaintiff filed a replying affidavit sworn by Moses Abuto where he confirms that a Judgment in this matter was delivered on January 29, 2021 by Justice Angote. He claims his erstwhile advocate did not attend court on the date of delivery of the Judgment. Further, that being dissatisfied with the said Judgment, they instructed their current advocate to file an appeal. He explains the preparatory steps they have undertaken to file the appeal. He contends that they are opposed to the applicant enforcing the judgment of the court as they will suffer irreparable damage. Further, that no prejudice will be occasioned upon the applicant. He avers that in the event the orders sought herein are granted and they are evicted, it will render their appeal nugatory. Further, that any intended or threatened eviction will cause some of the plaintiffs to be paupers and their properties greatly damaged. He reaffirms that they are ready and willing to abide by any directions issued by the court. Further, that the usage of the police in enforcement of a court order is unnecessary more so now that they have expressed their intention to prefer an appeal to the Court of Appeal and even filed an application for stay.
4. The defendant through its Vice Chairman Peter Ngui Mulili filed a supplementary affidavit where he confirmed that the plaintiffs' application dated the February 3, 2021 seeking enlargement of the period to lodge the notice of appeal was dismissed on January 26, 2022. He insists the respondents allegations that they intend to file an appeal is intentionally wrong, misguided and meant to hood wink the court. Further, the respondents will not suffer any prejudice and/or harm as they cannot file an appeal against the judgment of this court.

Analysis and Determination

5. Upon consideration of the notice of motion application dated the June 24, 2021 including the respective affidavits as well as rivalling submissions, the only issue for determination is whether an eviction order should issue against the plaintiffs from land parcel No 10967 and any resultant plots.
6. The defendant in its submissions contended that an eviction order should issue as the plaintiffs have declined to grant it vacant possession despite judgment being granted in their favour on January 29, 2021. Further, that the plaintiffs have not preferred any appeal. To buttress its averments, it relied on the



following decisions: *James Theuri Wambugu Vs Coquero Limited* (2017) eKLR; *Lengare Ole Ngape Vs Mpaale Ole Damo & Another* (2021) eKLR and *Teresia Wambui Kariuki V Anthony Gitthaiga Kabaru* (2019) eKLR.

7. The plaintiffs in their submissions provided a background of this matter and explained that they have filed an appeal being Civil Appeal No E 652 of 2021 at the Court of Appeal in Nairobi on February 10, 2022 and served the defendant. They Insist there are over fourteen (14) families who have been residing on the suit land for decades and will suffer irreparable harm if the orders sought are granted. Further, that the pending appeal will be rendered nugatory. they contend that the appeal process has not been exhausted and it is important for the court to consider their plight. Further, that insofar as the defendant should be allowed to enjoy the fruits of its judgment, various circumstances should be taken into account before the orders sought are granted. To support their averments, they relied on the following decisions: *First National Finance Bank Limited V Universal Apparels (EPZ) Ltd & 2 Others* (2017) eKLR and *Philip Keipto Chemwolo & Another Vs Augustine Kubende* (1986) eKLR.
8. It is not in dispute that this court already pronounced itself in a Judgment dated the January 29, 2021 in favour of the defendant. The defendant has since extracted a decree therefrom. I will proceed to reproduce hereunder the final orders of the impugned judgment:
 - a) That a permanent and perpetual injunction be and is hereby issued against the plaintiffs, their agents and or trustees from trespassing, claiming interest or ownership over the whole or part of the suit property parcel No 10967 or any other resultant plots therein.
 - b) That a declaration be and is hereby issued that the plaintiffs are not the legal owners of the suit property, are in illegal possession and should therefore vacate immediately.
 - c) That an order that the plaintiffs do vacate the suit property is hereby issued.
 - d) That costs of the suit to be paid by the plaintiffs jointly and severally.
9. It has emerged that since the delivery of the impugned Judgment on the January 29, 2021, the plaintiffs are yet to grant vacant possession of the suit property to the defendant. The plaintiffs claim they are in the process of filing an appeal and if the orders sought herein are granted, they will suffer irreparable harm and the appeal will be rendered nugatory.
10. On execution of a decree of immovable property as the case herein, order 22 rule 29(1) of the *Civil Procedure Rules* provides that:

Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”
11. In the current scenario, there exists a decree emanating from a court of competent jurisdiction against the plaintiffs wherein they were directed to grant vacant possession of the suit property to the defendant but they have declined to do so. They claim they have lodged an appeal against the said judgment and decree being Nairobi Civil Appeal No E652 of 2021 on February 10, 2022 but did not furnish court with any documents to that effect. Further, there are no orders of stay of execution in place. At this juncture, noting that the impugned judgment was delivered over one year ago, i find that the only remedy available to the defendant is to be granted eviction orders in accordance with order 22 rule 29(1) of the *Civil Procedures Rules* cited above so as to give effect to the impugned Judgment.



12. It is against the foregoing that i find the application dated the June 24, 2021 merited and will allow it. I will proceed to make the following final orders:
- a) An eviction order be and is hereby issued directed to the plaintiffs, their agents and or trustees over the whole or part of the suit property parcel No 10967 or any other resultant plots therein.
 - b) The Officer Commanding Police Station (OCS) Donyo Sabuk Police Station, Machakos County or the officer in charge of the nearest Police Station do oversee the enforcement of the said eviction order over the whole or part of the suit property parcel No 10967 or any other resultant plots therein.
 - c) That the plaintiffs be and are hereby ordered to pay the costs of the eviction exercise that may be incurred by the defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF JUNE, 2022

CHRISTINE OCHIENG

JUDGE

