



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
Civil Case 113 of 2011

**JOSEPH KIPROTICH YEGON.....PLAINTIFF/
RESPONDENT**

VERSUS

**TABARNO
CHEPKIYENG.....DEFENDANT/
APPLICANT**

RULING

Eric Chepkियeng filed the Notice of Motion dated 21/3/2012, seeking an order that he be allowed to execute the orders issued by this court on 18/11/2011; that the court do authorize the Officer Commanding Eldama Ravine Police Station to provide security to the Court Bailiffs and the Applicant during the execution of this court's orders in HCC 112/08 and lastly that the court do issue an eviction order against the respondent if he does not vacate the suit premises.

The applicant is the appointed attorney and administrator of the Estate of Tabarno Chepkियeng; that the respondent's appeal No.112/08, against an award dated 10/3/09 was dismissed in the applicant's favour on 29/4/2010 9ECI); The respondent's application dated 31/5/2011 in HCC 113/2011 was also dismissed on 18/11/2011; that the respondent has refused to comply with the court's order dated 10/3/09; that the applicant is suffering loss as a result of the respondent's illegal possession of the suit parcel No. 9 and 4 Poror.

The application was opposed. Mr. Kimatta, counsel for the respondent filed grounds of opposition which are to the effect that there is an Originating Summons which is yet to be heard; that the judgment sought to be executed was made in CMCC Land Case No. 27/08 where this application should have been made; that Land Disputes Act where the orders were made has been repealed and the application before court is bad in law.

Having considered the rival arguments, I do agree with the respondent that what this court dismissed on 18/11/2011, was an interlocutory application for injunction. The Originating Summons which is the main suit is yet to be heard on the merits. The instant application for execution is therefore premature.

The applicant also seeks to enforce orders made in Land Case 27/08. In that case, there was an appeal from the award made by the Land Disputes Tribunal case, in HCCA 112/2008, J. Mugo dismissed the appeal vide the ruling dated 29/4/2010 (EC1). The effect of the dismissal of the appeal was that the applicant could have proceeded with execution in the Land Case 27/2008. The applicant cannot therefore apply for execution in this matter.

As regards Mr. Kimatta's argument that the Land Disputes Tribunal Act has been repealed, it is my view, that the new law governing land matters cannot act retroactively. Matters that were commenced during the operation of the repealed law must be determined under the said law.

In the end, I do find that this application is premature. There are no orders that the court can execute in this suit. In my view, the parties should move to take directions in this matter so that the Originating Summons can be heard and determined on its merits. The application is hereby dismissed with the applicant bearing the costs.

DATED and DELIVERED this 25th day of July, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

N/A for the plaintiff/respondent

Eric Chepkiyeng for the defendant/applicant

Kennedy – Court Clerk