



**Muthiani (Suing as an Administrator of the Estate of Muthiani Musomba) v Manoti
(Environment & Land Case 318 of 2017) [2022] KEELC 2986 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2986 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 318 OF 2017**

**TW MURIGI, J
JUNE 22, 2022**

BETWEEN

**ROBERT KIOKO MUTHIANI (SUING AS AN ADMINISTRATOR OF THE
ESTATE OF MUTHIANI MUSOMBA) PLAINTIFF**

AND

MATHENGI MANOTI DEFENDANT

RULING

1. By a Notice of Motion dated September 20, 2021 brought pursuant to Order 22 Rule 29, Order 51 Rule 1 of the *Civil Procedure Rules*, Section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*, Article 159(2) of the *Constitution* and all other enabling provisions of the law the Applicant is seeking for the following orders: -
 - 1) Spent.
 - 2) That an order be issued evicting the Defendant/Respondent from land parcel number Mbitini/Ngetha/390 and all the buildings and/or structures constructed thereon be demolished as directed by the Court in its judgment delivered on June 20, 2019.
 - 3) That an order be issued directing the Officer Commanding Station (OCS) Emali Police Station to enforce and supervise the forceful eviction of the Defendant/Respondent from land parcel number Mbitini/Ngetha/390 and the demolishing of all the structures constructed on the same land.
 - 4) That the Defendant/Respondent do pay the Plaintiff the cost of this application.
2. The application is premised on the grounds appearing on the face of the application and on the supporting affidavit of the Applicant sworn on the even date. A summary of the grounds and the averments is that vide the judgement delivered on June 20, 2019 and the decree extracted on 1st of



October 2019, the Court granted eviction orders against the Defendant from the suit land. That the Court further granted orders to the effect that the Plaintiff would be at liberty to file an application seeking for orders of eviction against the Defendant in the event the Defendant failed to vacate the suit land.

3. The Applicant averred that the Defendant had deliberately refused to vacate from the suit property despite being served with the decree and despite being aware of the matter. The Applicant further averred that the Defendant had refused to pay Kshs 200,000/- awarded to him as general damages. The Applicant argued that it is in the interest of justice that the instant application is allowed.
4. Although the Defendant was duly served, he failed to file a response to the application.
5. The application was canvassed by way of written submissions. The Applicant's submissions were filed on March 16, 2022 which I have duly considered.

Analysis and determination

6. Having carefully considered the application and the submissions, I find that the issue for determination is whether the Applicant is entitled to the orders sought.
7. The Plaintiff instituted this suit against the Defendant on July 27, 2017 vide a plaint dated July 26, 2017 and sought for the following orders: -
 - a) An eviction of the Defendant from the suit property.
 - b) General damages for trespass.
 - c) Costs of the suit.
8. The Defendant did not enter appearance or file defence despite being duly served. On July 10, 2018 the Court directed that the matter to proceed as an undefended suit. The hearing of the Plaintiff's suit proceeded on December 19, 2018 and on June 20, 2019, the Court pronounced itself in a judgment in favour of the Plaintiff in the following terms: -
 - a) An eviction of the Defendant from the subject land. If the Defendant fails to willingly vacate the subject land, the Plaintiff will be at liberty to file an application before this Court for his eviction.
 - b) Kshs 200,000/- being general damages.
 - c) Costs of the suit.
9. The Applicant deposes that the Respondent has deliberately declined to vacate the suit property despite having being served with the decree. No response was filed to the application despite the same being served upon the Respondent.
10. There is already a judgment in favour of the Applicant and it appears that the Respondent has not adhered to the terms of the judgment. The Plaintiff already has an eviction order in terms of paragraph (a) of the judgment. The judgment is specific that if the Defendant fails to willingly vacate the subject land, the Plaintiff will be at liberty to file an application for his eviction. The Applicant is merely seeking for an order of eviction to issue as directed by Hon Justice Mbogo in the judgment dated June 20, 2019.
11. The judgment delivered on June 20, 2019 has neither been set aside nor challenged in any way. It is clear that since the judgement was delivered on June 20, 2019 and a decree extracted on October 1, 2019, the Respondent has not given the Plaintiff vacant possession of the suit land. I find that the Applicant is entitled to enjoy the fruits of his judgment.



12. The upshot of the foregoing is that I find that the application herein is merited and the same is allowed in the following terms;
- a. An order of eviction be and is hereby issued against the Respondent from land parcel Mbitini/Ngetha/309.
 - b. The Officer Commanding Police Station Emali is hereby authorized to enforce compliance of the Court order.
 - c. The Respondent to bear the cost of this application.

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HON. T. MURIGI

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF JUNE, 2022.

IN THE PRESENCE OF: -

Court Assistant – Mr. Kwemboi

Makundi holding brief for Kasyoka for the Applicant.

