



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Environmental & Land Case 305 of 2010

DR. MATHEW KIRIAGO AKAMA.....1ST PLAINTIFF

MESHACK OMARI MANOTI.....2ND PLAINTIFF

VERSUS

MATHEW KANGWANA.....DEFENDANT

RULING

1. The Plaintiffs/Applicants have filed a Notice of Motion application dated 6/6/2012 seeking orders that the OCS Lang'ata Police station be ordered to enforce and ensure compliance of the decree and orders given by this court on 22/11/2011. That OCS Lang'ata Police station be ordered to supervise the execution of the decree given by the court on 22/11/2011 and the removal or demolition of the buildings and structures erected on the parcel of land known as L.R No. 209/13393 Grant No. I.R. 90905, hereinafter referred to as suit property. That OCS Lang'ata Police station be ordered to put the Applicants in possession of the suit property and cost of the application.

2. The application is premised on the grounds that, and supported by an affidavit sworn by the 1st Applicant that by a judgment of the court delivered on 22/11/2011, the court ordered and declared that the Applicants the *bonafide* proprietors and entitled to the possession of the suit property. That the court further ordered the Respondent herein to remove the buildings and structures erected thereon at his costs within 60 days of service of the decree upon him, and in default thereof, the Applicants be liberty to remove the same at the Respondent's costs. That the court further ordered that the Respondent be permanently be restrained from remaining on or continuing in occupation of the suit property. That the decree was extracted and served upon the Respondent on 10/1/2012, and that despite service the Respondent has failed to remove the building and structures and remains on and continues to be in occupation. That the sometimes in April and May of 2012 the Applicants attempted to move into the suit property but that the Respondent resisted and obstructed their entry. That on 31/5/2012 the Applicants went to the suit property and confirmed that the Respondent has dug foundation channels with the intention of adding more structures. That the Applicants are being prevented from enjoying the fruits of their judgment and that the Respondent is acting in defiance and flagrant breach of the decree and orders given by the court. The Respondent did not respond to the application, neither did he attend the hearing though having been duly served. The application was heard before me *ex-parte* on 9/7/2012. Counsel for the applicant made oral submissions and reiterated the contents in the supporting affidavit.

3. This application stems from the decree of the judgment of this court (Nyamweya, J.) in favor of the applicant delivered on 22/11/2011. It is worthy to note that throughout the case, the Respondent has never entered appearance, responded to any pleading nor attended court for hearings. Further, at all times, the

Respondent has always been served with the pleadings, but has declined to acknowledge service of the same save for the summons to enter appearance and the plaint wherein he acknowledged service by signing at the reverse of the summons.

4. There is a decree by this honorable court which has not been reviewed, set aside or appealed against. This decree therefore remains unchallenged. In that I regard, I allow the Applicant's application dated 6/6/2012 in prayer number 2,3 and 4 with costs.

Orders accordingly.

Dated, signed and delivered this **21st** day of **September** 2012

R. OUGO

JUDGE

In the Presence of:-

.....For the Applicants

.....For the Respondents

Kabiru

Court Clerk