



**Muchangi Nduati Ngingo T/A Muchangi Ndutai Company Advocates v Samia Properties Limited  
(Environment & Land Case 105 of 2020) [2022] KEELC 2213 (KLR) (16 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2213 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 105 OF 2020**

**JG KEMEI, J  
JUNE 16, 2022**

**BETWEEN**

**MUCHANGI NDUATI NGINGO T/A MUCHANGI NDUTAI COMPANY  
ADVOCATES ..... APPLICANT**

**AND**

**SAMIA PROPERTIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Applicant moved the Court vide the Originating Summons brought under Order 37 rule 3, 8, & 11 of the *Civil Procedure Rules* and all other enabling provisions seeking the determination of the following issues;
  - a. Whether the Plaintiff was declared and decreed in ELC 441 of 2009 as the lawful and beneficial owner of the properties namely RUIRU/KIU/BLOCK4/2006,2008,2009,2011,2012 and 2041 currently unlawfully occupied by the Respondent (read Defendant) its agents or servants or those claiming under it.
  - b. Whether the titles for the above said plots registered in the Respondent's name were nullified and the said parcels ordered registered in his name
  - c. Whether the said decision of 27/9/2018 and the subsequent decree issued on the 25/10/2018 in ELC NO 441 OF 2009 is still in force and remains unchallenged.
  - d. Whether the Respondent's continued occupation of the suit premises is therefore unlawful and untenable.
  - e. Whether the eviction order should issue against the Respondent, its agents and or servants or those claiming under its name to be removed from the suit properties in the premises.
2. Consequently, the Applicant sought orders against the Respondent for;



- a. The Respondent be ordered to give vacant possession of the suit lands.
  - b. In default an eviction order be issued for the removal of the Defendants its agents servants or those claiming under it from the suit plots
  - c. That the Respondent be ordered to pay costs of the suit.
3. The application is supported by the affidavit of Muchangi Nduati Ngingo sworn on the 13/11/2020 in which he deponed that he filed suit vide ELC No 441 of 2009 against the Respondent and two others claiming ownership of the suit lands inter alia. That the Respondent defended the said suit which suit was finally heard and determined in his favour. An attempt by the said Respondent to set aside the judgement was dismissed. That he also unsuccessfully sought eviction orders but the same was dismissed because the Court noted that he had not sought an order of eviction as a substantive order in the suit and that there was need to file fresh suit to canvass the issue of eviction of the Respondent and those who were in occupation of the suit lands. That the issue of ownership of the suit land is already determined and despite the clear orders of the Court the Respondent has refused to vacate necessitating the filing of these proceedings. In addition, he stated that he is amenable to selling the suit lands to the Respondent at the current market price should it be interested otherwise they ought to vacate the suit lands or be evicted.
  4. Despite service of the Originating Summons the Respondent did not oppose the application.
  5. On the 30/11/2021 the Applicant elected to canvass the application by way of written submissions. The Respondent was absent though served. The Applicant's submissions were filed on the 28/2/2022 by the firm of Muchangi Nduati & Co. Advocates. The Respondent did not file any submissions. I have read and considered the submissions on record.
  6. Is the application merited? It is not disputed that the ownership despite between the parties was fully adjudicated vide the judgement of the Court delivered on the 27/9/2018 in favour of the Applicant. In this judgement the Court adjudged the suit lands to belong to the Applicant. There is no evidence that this Judgment has been set aside, vacated and or appealed against.
  7. Section 4(4) of the [Limitations of Actions Act](#) states as follows;
 

“An action may not be brought upon a Judgment after the end of twelve years from the date on which the Judgment was delivered, or (where the Judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a Judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”
  8. It is my view that since the judgement of the Court was issued in 2018 the same remains valid and enforceable.
  9. The Applicant has led unchallenged affidavit evidence that despite the decision of the Court cited above the Respondent has continued to occupy the suit land without his authority. Section 24 and 25 of the [Land Registration Act](#) provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided for in law. The Applicant having been declared as the owner of the suit lands is entitled to the proprietary rights including the enjoyment of the quiet enjoyment of the suit lands and possession of the same. An occupant of a parcel of land without the authority of the owner is a trespasser on the land.



10. I am persuaded that the Respondent has not given any justiciable reason for its continued occupation of the suit land. Its continued stay on the land is therefore unlawful and untenable in the presence of the subsisting judgement in favour of the Applicant.
11. In conclusion I therefore grant the orders of eviction as prayed.
12. Final orders and disposal
  - a. The application is allowed.
  - b. The Respondent is ordered to vacate the suit land within a period of 30 days from the date of this order.
  - c. In default the Applicant is authorized to evict the Respondents bearing in mind the provisions of Section 152 E of the *Land Registration Act*.
  - d. I make no orders as to costs.
13. It is so ordered

**DELIVERED, DATED AND SIGNED AT THIKA THIS 16TH DAY OF JUNE 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Nduati for the Plaintiff

Defendant - Absent

Court Assistant – Phyllis Mwangi

