



REPUBLIC OF KENYA



KENYA LAW
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**Monyenche v Nyamboga & 2 others (Environment & Land Case
35 of 2021) [2022] KEELC 2877 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2877 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 35 OF 2021**

MD MWANGI, J

JULY 28, 2022

BETWEEN

JOHN NYANG'AU MONYENCHE PLAINTIFF

AND

NYAMUSI NYAMBOGA 1ST DEFENDANT

NACKSON ONYANCHA MOMANYI 2ND DEFENDANT

PERIS KEMUNTO MONYENYE 3RD DEFENDANT

RULING

1. On 22/4/2022 I delivered a Judgment whose Decree is well pronounced. The same granted reliefs for: -
 1. Eviction of the Defendants from the piece of land parcel number West Mugirango/ Bomanono/1135.
 2. That the Defendants do pay the sum of Kshs. 400,000/= jointly and severally to the Plaintiff as General Damages for illegal occupation.
2. After the above judgment was delivered, a Notice of Appeal was filed on 10/5/2022. On 5/7/2022 the Plaintiff/Applicant filed an Application for an order restraining the Defendants from trespassing onto, plucking tea, cutting trees and/or from encroaching land parcel number West Mugirango/ Bomanono/1135. There is also a prayer that beacons be put to clearly define the above referenced parcel of land. The grounds used to support the Application are that the 2nd Defendant is still encroaching onto and plucking tea from the suit land in spite of the Judgment and that no beacons have been placed to delineate the suit land and from the Supporting Affidavit the Decree-Holder laments that the Judgment-Debtor can only be stopped by this court from interfering with her suit land.
4. This I must confess is a very unfortunate Application.



5. The Application for Execution is supposed to be brought as is shown in Appendix A of the [Civil Procedure Act](#) Form No. 14 stating the mode of assistance of execution to be accorded by the Court.
6. I read mischief in the Application particularly prayer No. 4 viz. that the beacons be put to clearly define the aforementioned parcel of land. This is what has brought the Decree-Holder back to Court and the rest are just camouflage. This is a prayer that ought to have been included in the Plaint before the close of the case and not as an execution process. Asking the Court to give you further reliefs that had not been prayed for before is re-opening the case. If the same were given at this juncture, the Judgment-Debtor would be condemned unheard. The Court is already functus officio.
7. Under Section 25 of the [Civil Procedure Act](#), the court, after the case has been heard, shall pronounce Judgment, and on such Judgment a Decree shall follow.
8. Section 30 of the [Civil Procedure Act](#) provides that A Decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.
9. Under Order 22, rule 6 of the [Civil Procedure Rules](#), where the holder of a Decree desires to execute it, he shall apply to the Court which passed it, or, if the Decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof; and Applications under this Rule shall be in accordance with Form No. 14 of Appendix A.
10. Order 22, Rule 13(1) of the [Civil Procedure Rules](#) provides that:

“On receiving an application for the execution of a decree as provided by rule 7(2), the court shall ascertain whether such of the requirements of rules 7 to 9 as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied there and then or within a time to be fixed by it.

4. When the application is admitted, the court shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

18 (3) Except as provided in rule 6 and in this rule, no notice is required to be served on a judgment debtor before execution is issued against him.”

Under Order 49 Rule 7 (1) (b) the Registrar may—

“(b) hear and determine an application made under the following Orders and rules —

- i. Order 1, rules 2, 8, 10, 17 and 22;
- ii. Order 2, rules 1 and 10;
- iii. Order 3,5 and 9;
- iv. Order 6;
- v. Order 7, rules 16 and 17 (2);
- vi. Order 8;
- vii. Order 10, rules 1 and 8;
- viii. Order 20;



- ix. Order 21, rule 12;
- x. Order 22 other than under rules 28, and 75;
- xi. Order 23, 24, 25, 26, 27, 28, 30,31 and 33; and
- xii. Order 42, rule 14.”

11. When the Court gives you final orders for Eviction, are they not synonymous with orders against Trespass? If the Judgment-Debtor trespasses onto your parcel of land while you hold eviction orders, you evict him. If he trespasses 100 times, you don't come back to Court 100 times to apply for the same orders in different acronyms such as injunction or restraining orders, you still use the same Decree to evict him 100 times. Or you cite him for contempt. Otherwise the Judgment-Debtor may start developing immunity from court executing teeth which are merely administrative. By inviting the Judgment-Debtor to respond to this Application you grant him a seat in court which he doesn't deserve any. What if the Application is unfortunately not successful, say for none-attendance on your part, what message do you pass across to the Judgment-Debtor? That he is now free to remain on the suit premises?
12. Where there are specific procedures to be followed, the same should be adhered to strictly and Parties ought to confine themselves to those avenues rather than resorting to Sections 1B and 3A of the Civil Procedure Act. The Court has already determined the rights of the Decree Holder, there is no stay of execution, there is even no appeal on record and even if there was one there are no stay orders. What brings you back to Court? Go and commence the process of Execution. What injunctions are you coming for? Execute.
13. I therefore dismiss the Application dated 5/7/2022 for the same is an abuse of the process of this Court. The same is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF JULY 2022.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Plaintiff: N/A

Defendants: N/A

