



**Kamula & 2 others v Mwololo & another (Environment & Land Case
24 of 2018) [2025] KEELC 3081 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 24 OF 2018**

EO OBAGA, J

APRIL 3, 2025

BETWEEN

STEPHEN KIVANDI KAMULA 1ST APPLICANT

JOSEPHINE MUTINDI KILUVA 2ND APPLICANT

BELLA ROSE LAVI 3RD APPLICANT

AND

BONIFACE KIOKO MWOLOLO 1ST RESPONDENT

SIDIAN BANK LIMITED 2ND RESPONDENT

RULING

1. The Decree holder/Applicants filed a Notice of Motion dated 5th August, 2024 in which they sought the following orders:
 1. Spent
 2. That an order of eviction be issued against the 1st Respondent by himself or his agents, assigns, heirs and/or servants to immediately vacate Land Registration Number Makueni/Emali Town 234 pursuant to the Decree of Court dated 12th May, 2022.
 3. That the eviction of the 1st Respondent by himself or his agents, assigns, heirs and/or servants to immediately from Land Registration number Makeuni/Emali Town 234 be conducted either by the Court Bailif or an Auctioneer to be appointed by the Applicant.
 4. That the Officer commanding Emali Police Station be authorized to enforce compliance of this eviction order by providing security to the Court Bailif/Auctioneer.
2. The Applicants state that this court decreed that LR. No. Makueni/Emali town 234 (suit property) belonged to them. On 22nd May, 2024 the court in Judicial Review application No. E005 of 2023



directed the Land Registrar to register the suit property in the name of the Applicants. The 1st Judgment Debtor/Respondent executed transfer forms to facilitate the registration of the suit property in the Applicants' names but that the Respondent has refused to vacate the suit property from which he continues to collect rent.

3. The Applicants further state that the Kshs.300,000/= which was due to the Respondent should be offset from the taxed costs and that there is no basis for the Respondent to continue staying on the suit property when there are no orders staying the execution of the decree. They contend that the Respondent had ignored previous orders of the court directing that he deposits the rental income in court and that therefore it is only the eviction orders which are suitable in the circumstances.
4. The Respondent opposed the Applicants' application based on a replying affidavit sworn on 7th October, 2024. The Respondent contends that the Applicants' application is premature in that he has already filed an appeal against the judgment of the court which appeal is yet to be determined. The Respondent further contend that the Kshs.300,000/= which the Applicants have not paid and the averment that the amount will be offset from the taxed costs is an afterthought as his appeal is yet to be determined.
5. The Respondent states that the suit property is still registered in his name and that he is in possession and any eviction during the pendency of his appeal is premature. He states further that he is willing to give vacant possession once his appeal is determined in favour of the Applicants.
6. In a supplementary affidavit sworn on 29th October, 2024, the Applicants state that the Respondent filed an application for stay of execution before the Court of Appeal which application was dismissed with costs after the court found that the Appeal had no arguable grounds.
7. The Applicants filed submissions dated 11th November, 2024. The Respondent filed submissions dated 30th January, 2025. I have considered the Applicants' application, the opposition to the same as well as the submissions by the parties and the authorities cited. The only issue for determination is whether eviction orders should issue.
8. There is no contention that it is the Respondent who sold the suit property to the Applicants. The transfer could not go through as the Respondent had charged the suit property to Sidian Bank Limited. The issue of the charge was not disclosed to the Applicants. The balance of Kshs.300,000/= was to be payable to the Respondent. The Applicants have given their indication that the amount will be offset from the taxed costs which the Respondent is not opposing.
9. The Respondent is still collecting rent from the suit property despite orders having been granted for him to deposit, the same in court. The Respondent's application for stay of execution was dismissed by the Court of Appeal which observed that the Respondent had not demonstrated any arguable ground in his appeal. This being the case, I do not see why the Respondent should continue being on the suit property. I therefore find that the Applicants' application has merits. I allow the same in terms of prayer 2, 3, 4 and 5.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3RD DAY OF APRIL, 2025.



In the Presence of:

Mr. Mapesa for the Applicant.

Court assistant – Steve Musyoki

