



REPUBLIC OF KENYA



KENYA LAW
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**Mathu v Shilo Tabernacle Church & another (Environment & Land Case
277 of 2017) [2022] KEELC 13361 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 277 OF 2017
TW MURIGI, J
SEPTEMBER 28, 2022**

BETWEEN

KARIUKI MATHU APPLICANT

AND

SHILO TABERNACLE CHURCH 1ST RESPONDENT

PETER MUTHAMA 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 24th of June 2021 brought pursuant to the provisions of Article 159 of *the Constitution*, Section 3A of the *Civil Procedure Act* and all other enabling provisions of the law, the Applicant seeks for the following orders: -
 - i. Spent.
 - ii. That the Honourable Court do direct that the Officer Commanding Kibwezi Police Station to ensure compliance with the orders issued by the Court in Makueni ELC Case No. 277 of 2017 in the judgment delivered on 11th of May 2021.
 - iii. That the costs of the application be provided for.

The Applicant's Case

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Applicant sworn on the even date.
3. A summary of the Applicant's case is that this matter was heard and determined on merit and a judgment pronounced in favour of the Applicant. That although the Respondents were duly served, they did not participate in the proceedings herein. The Applicant further averred that the Respondents have a tendency of disobeying Court orders hence this application.



4. Although the Respondents were duly served, they did not respond to the application.
5. The application was canvassed by way of written submissions.
6. The Applicant's submissions were filed on 14th of June 2022 which I have duly considered.

Analysis and determination

7. Having considered the application, the pleadings and the written submissions, I find that the only issue for determination is whether the Applicant is entitled to the orders sought.
8. The Plaintiff instituted this suit against the Defendants vide a Plaint dated 15th of December 2016 and sought for the following orders: -
 - i. A permanent injunction restraining the Defendants from trespassing on the Plaintiff's parcel of land being L.R. No 12080 at Kibwezi.
 - ii. The Honourable Court do issue an eviction Notice against the Defendants from occupying the suit property No. L.R. No.12080.
 - iii. General damages.
 - iv. Costs and interest of this suit.
9. The Defendants filed a joint Statement of Defence dated 20th of May 2019 and denied the Plaintiff's claim. The hearing proceeded ex parte on 19th of November 2020 after the Court was satisfied that the Defendants Advocate had been duly served with the hearing notice. The Court rendered its judgment on 11th of May 2021 in the following terms: -
 - a. A permanent injunction restraining the Defendants from trespassing on the Plaintiff's parcel of land being L.R. No 12080 at Kibwezi.
 - b. The Honourable Court do issue an eviction notice against the Defendants from occupying the suit property which is L.R. No 12080.
 - c. Kshs 300,000/- being general damages.
 - d. Costs and interest of the suit.
10. The Applicant deposes that the Respondents have deliberately declined to vacate the suit property despite having been served with the decree. No response was filed to the application despite the same being served upon the Respondents.
11. There is already a judgment in favour of the Applicant and it appears that the Respondents have not adhered to the terms of the judgment. The Plaintiff already has an order for an eviction notice against the Defendants from occupying the suit property in terms of paragraph (b) of the Judgment.
12. The Applicant is merely seeking for an eviction Notice to issue against the Defendants as directed by Hon Justice Mbogo in the judgment dated 11th of May 2021.
13. The judgment delivered on 11th of May 2021 has neither been set aside nor challenged in any way. It is clear that since the judgment was delivered on 11th of May 2021 and a decree extracted on 14th of January 2022, the Respondents have not given the Applicant vacant possession of the suit property. Litigation must come to an end. Consequently, this Court finds and holds that the Applicant is entitled to enjoy the fruits of his judgment.



14. The upshot of the foregoing is that the application dated 24th of June 2021 is allowed in the following terms;
- a. An order of an eviction Notice be and is hereby issued against the Respondents from occupying land parcel L.R No. 12080.
 - b. The Officer Commanding Kibwezi Police Station is hereby authorized to enforce compliance of the Court orders issued on 11th of May 2021.
 - c. The Respondents to bear the cost of this application.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF SEPTEMBER, 2022.

IN THE PRESENCE OF: --

Court assistant – Mr. Kwemboi

Mulandi for the Applicant.

