

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1301 of 2003

MICHAEL GEORGE KASIA KWALI.....PLAINTIFF

VERSUS

PENINAH MUSANGI MULWA.....DEFENDANT

R U L I N G

Before me is an application by way of Notice of Motion dated 10th February 2009 and expressed to be brought under Order XXI Rule 30 (1) and Order L Rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act brought by the Plaintiff/decree holder seeking orders that he be put in effective possession of the suit property being **LR No YATTA B2/KANGONDE/116** by the removal or eviction of the Defendants/Judgment debtors from the suit property and that the court's bailiff be directed to put the Plaintiff/Decree holder in possession and to remove any person who is bound by the decree herein who may refuse to vacate the same. The Applicant also seeks costs of this application and of the exercise of the removal or eviction of the Defendants/Judgment debtors. The application is based on the grounds as stated on the body of the Notice of Motion and an affidavit sworn by the Applicant in which he avers that he is informed by his advocates on record which information he truly believes that the Defendants' defences were struck out on 5th July 2004 and judgment was entered in his favour as prayed in the plaint.

There is an order attached to the Notice of Motion dated 10th February 2009 but there are no proceedings from which this order emanated. Further the suit land is in Muthare village in Mwingi District and the dispute involves lowly peasants and there is no explanation why the Plaintiff came all the way to Nairobi while there is a High Court in Machakos.

The Applicant has not placed before the court sufficient material to persuade the court to exercise its discretion in his favour. I decline to grant the orders sought.

I make no order as to costs.

Dated and delivered at Nairobi this 10th day of June 2009.

J. L. A. OSIEMO

JUDGE