



**Kiambi v Kabari & another (Environment and Land Appeal
3 of 2020) [2022] KEELC 13592 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 3 OF 2020
CK NZILI, J
OCTOBER 12, 2022**

BETWEEN

JEREMIAH MUGENDI KIAMBI APPELLANT

AND

JOSEPH MURORI KABARI 1ST RESPONDENT

FRANCIS MUNYUA 2ND RESPONDENT

RULING

1. By an application dated 12.5.2022 the appellant seeks for an order that the respondents to allow him to remove his houses and or harvest food crops from L.R NO. Abothuguchi/Kiiija/1459 for a period of six months or such other reasonable period as the court may deem fit and just.
2. The application is based on the grounds set out on the foot of the application and a supporting affidavit sworn by Jeremiah Kiambi on the even date, in which he has attached photographs marked JK 2 – JK 6 respectively. In the said exhibits, the applicant has demonstrated his developments on the suit land which he says were acknowledged by the respondents in the course of the hearing.
3. The applicant avers that he is satisfied with the judgment and does not wish to appeal over it hence instead of being evicted, which will make him suffer untold loss and damage, it was only fair that he be given a stay for six months to move out of the suit land in a peaceful manner.
4. The respondents have opposed the application through a preliminary objection that the court lacks jurisdiction to entertain the request which was under the wrong provisions of law.
5. By written submissions filed on 13.6.2022, the applicant has stated the issue of his occupation of the land was undisputed and since he did not wish to appeal against the judgment, the court should help him minimize his personal loss by allowing him to organize the relocation of his matrimonial home and harvest the crops for the current season.



6. Further, it was submitted that the execution was yet to commence so no loss or harm would be occasioned to the respondents should the orders sought be granted.
7. The applicant further submitted that the application was made in good faith, without undue delay and was not meant to frustrate the respondents in enjoying the fruits of their litigation but to facilitate the grant of vacant possession.
8. It is not in dispute that the court pronounced its judgment on 9.3.2022. There is no evidence that the respondents have extracted any decree for eviction and served the same upon the applicants. The application was filed two months after the judgment. The reasons given are to enable the applicant to relocate and peacefully hand over vacant possession to the respondents.
9. The court was clear in its judgment on the circumstances leading to the fate by the appellant. Be that as it may the applicant has had more than 7 months to comply with the decree. Judicial notice can also be taken that the crop season envisaged in the application is almost over.
10. Given the foregoing and in the interest of justice the court directs that the applicant hands over vacant possession to the respondents on or before 15th November, 2022, in default execution to issue.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 12TH DAY OF OCTOBER, 2022

In presence of:

Muchiri for Mukaburu for applicant

Ccourt Assistant: Kananu

HON. C.K. NZILI

ELC JUDGE

