



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Civil Case 2 of 1990**

**JOSEPH MWANGI IRUNGU (*Substituted***

**by SUSAN WAMUYU MWANGI ..... PLAINTIFF**

**VERSUS**

**GEOFFREY MWANGI WACHIRA ..... DEFENDANT**

**RULING**

The Notice of motion dated 21<sup>st</sup> October 2008 is brought by the plaintiff. It is brought under order XXI rule 30 (1) of the Civil Procedure Rules. By that application the plaintiff seeks in the first prayer an order of eviction of the defendant, his family, servants and agents from parcel No. IRIAINI/GATUNDU/119. In the second prayer the plaintiff seeks an order that Green Bells Auctioneers be authorized to carry out the eviction or removal of the defendant. In the third prayer the plaintiff seeks an order that the officer commanding police station Karatina be ordered to provide security during that exercise. In the final prayer the plaintiff seeks costs for the auctioneers and herself. The background in this matter is that judgment was entered against the defendant on 16<sup>th</sup> June 1994 whereby the court declared the plaintiff the rightful of the suit property. By that judgment the defendant was ordered to vacate that property. At sometime in 1997 the defendant requested for time to remove his coffee on the land. He was given upto 31<sup>st</sup> May 1998 to do so. He did not move out of the land as ordered. On 7<sup>th</sup> January 2008 the defendant was evicted by the auctioneer following a court order. As a result of that action the defendant made a complaint to the police that the plaintiff and his family had destroyed his properties. The plaintiff and his family were arrested and arraigned before the Karatina SRM's court. The defendant took that opportunity of the criminal trial to return on the suit land. To date the defendant is still on the land. The defendant filed an appeal against the judgement of the High Court but the court of appeal declined to hear his appeal until he purged his contempt. The plaintiff in bringing the present application ought to realize that this court by its ruling dated 21<sup>st</sup> February 1996 did order the eviction of the defendant and his family from the suit land. That being so the first prayer of the notice of motion of 21<sup>st</sup> October 2008 cannot be entertained again for indeed would be Res judicata. The defendant responded to that application by saying that if he is evicted immediately he would be rendered destitute. This is because he had coffee bushes, bananas, macadamia trees and other trees on the parcel of land. He states that he had been in occupation of that land since 1958. he prays that this court will give him one year to enable him to relocate to an alternative place. In seeking that time the court is very conscious of the fact that the defendant previously was given one year to vacate the premises but failed to do so. If indeed the defendant was acting in good faith having knowledge that judgement was entered against him in 1994 and also having the knowledge that the court of appeal has refused to entertain his appeal until he does purge the contempt he ought to by now have vacated the premises to enable him to sue his right of appeal. He has not done so and therefore he does not deserve the mercy of this court. The plaintiff has wrongfully been kept out her property since 1994. It is time for justice to arise on her behalf and restore her to her property. The ruling of this court is in the following orders:-

1. *That the plaintiff shall evict and or remove Geoffrey Mwangi Wachira, his family, servants and or agents from parcel land No. IRIAINI/GATUNDU/119 as ordered by this court on 21<sup>st</sup> February 1996.*
2. *That Green Bells auctioneer and official court brokers Nyeri are hereby authorized to carry out*

*actual eviction and or removal of the said Geoffrey Mwangi Wachira, his family, servants and or agents and remove all movable property of the said Geoffrey Mwangi Wachira.*

3. *An order is hereby issued that the officer commanding police station Karatina do provide security during the eviction and removal of Geoffrey Mwangi Wachira from that property and do ensure that peace is maintained.*

4. *The court does hereby order the defendant to pay the auctioneer expenses and the plaintiff's costs of the notice of motion dated 21<sup>st</sup> October 2008.*

*Dated and delivered at Nyeri this 17<sup>th</sup> day of December 2008.*

**MARY KASANGO**

**JUDGE**