



**Ongeta (Suing as the Legal Administrator of the Estate of Jackson
Ongeta Change - Deceased) v Ogoti (Environment & Land Case
91 of 2021) [2022] KEELC 14980 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14980 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 91 OF 2021
JM KAMAU, J
NOVEMBER 24, 2022**

BETWEEN

**PRISCAH BISINGA ONGETA (SUING AS THE LEGAL ADMINISTRATOR OF
THE ESTATE OF JACKSON ONGETA CHANGE - DECEASED) PLAINTIFF**

AND

SAMWEL GISIORA OGOTI DEFENDANT

RULING

1. The plaintiff's claim in this case was for the determination of the following prayers:-
 - i. A declaration that the inclusion of a portion measuring 2.25 acres, in LR No Gesima Settlement Scheme/299, in favour of the defendant, was fraudulent, illegal, null & void.
 - ii. An order of cancellation and/or rectification of the register in respect of LR No Gesima Settlement Scheme/299, with a view to excising the portion measuring 2.25 acres and reverting same to the Estate of the Deceased.
 - iii. A permanent injunction restraining the defendant either by himself, agents and/or servants from entering upon, cultivating, occupying, encumbering, dealing and/or interfering with the plaintiff's and the estate of the deceased's possession, occupation and use of the portion measuring 2.25 acres now forming and/or comprising of LR No Gesima Settlement Scheme/299, whatsoever and/or howsoever.
 - iv. Costs of this suit be borne by the defendant.
 - v. Such further and/or other relief as the honourable court may deem fit and expedient so to grant.



2. Judgment was delivered on March 23, 2022 dismissing the plaintiff's claim over a portion of the parcel of land known as LR Gesima Settlement Scheme/299 measuring 2.25 acres.
3. Subsequently, on June 20, 2022 the defendant/decree holder applied to this court by way of a notice of motion for the following: -
 1. The honourable court be pleased to order and/or direct that the plaintiff/respondent herein do grant vacant possession in respect of land parcel No LR No Gesima Settlement Scheme/299 registered in the name of and belonging to the defendant/applicant.
 2. In the alternative and without prejudice to prayer (1) hereof, the honourable court be pleased to order and/or direct that the plaintiff/respondent be forcefully evicted from land parcel No LR No Gesima Settlement Scheme/299 forthwith.
 3. That the OCS, Manga Police Station do ensure compliance with the orders.
 4. Costs of the eviction and the instant application be borne by the plaintiff/respondent herein.
 5. Such further and/or other orders be made as the court may deem fit and expedient.
4. In the meantime, the decree holder samuel gisiora ogoti died on July 11, 2022 before realizing the fruits of his otherwise successful litigation but having made the application to have vacant possession of his portion of land that was being claimed by the judgment debtor. He was substituted by one Jane Kerubo Gisiora, his wife on October 19, 2022. The judgment debtor countered the above application for vacant possession and/or eviction vide a statement of grounds of opposition dated July 5, 2022 claiming that this court is *functus officio* and the Application is therefore an abuse of the process of the court.
5. I have looked at the rival sentiments.
6. Subsequent to every judgment, there follows the process of execution. The whole of part III of the [Civil Procedure Act](#) is devoted to execution of decrees.

Section 30 provides that:

"a Decree may be executed by the court which passed it or by the court to which it is sent for Execution."

Section 34 (1) provides: -

"All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit."

7. Under order 22 of the [Civil Procedure Rules](#), rule 29 provides how such a decree in respect to immovable property should be executed.

Decree for immovable property [order 22, rule 29.]

1. Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.



2. Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property.
 3. Where possession of any building or enclosure is to be delivered, and the person in possession being bound by the decree does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of her community to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.
8. We also wish to bring to the attention of the judgment debtor the following safeguards afforded to the decree holder while executing the decree:

Order 22, rule 82:

- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.
- (2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Order 22, rule 83.

Where the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor, or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and, where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in prison for a period not exceeding thirty days.

9. From the above, it is not in doubt that execution of a decree issued by a court is in the arena of the court that gave judgment unless the court orders otherwise by way of say transfer.
10. Since the judgment debtor only raised the issue of jurisdiction but did not oppose the application dated June 20, 2022 and which jurisdiction the court has ruled that it has, the application dated June 20, 2022 is hereby granted with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 24TH DAY OF NOVEMBER 2022.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Plaintiff: Mr Ochwangi

Defendant: Mr Nyambati holding for Ms Gogi

