



Kortot & another v Gisore (Enviromental and Land Originating Summons E004 of 2021) [2025] KEELC 4181 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4181 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2021
MN MWANYALE, J
MAY 29, 2025**

BETWEEN

NTETIA ENE KORTOT 1ST PLAINTIFF

NONKOKWA ENE KORTOM 2ND PLAINTIFF

AND

WILLIAMSON ONYANCHA GISORE DEFENDANT

RULING

1. Before court for determination is the Notice of Motion application dated 28.10.2024 seeking that the plaintiffs be committed to civil jail for refusing to obey the court order issued in the Judgment delivered on 22.09.2022.
2. The application further seeks that the plaintiffs to vacate and/or be forthwith evicted from the land parcel Transmara/Mapashi/329, and the eviction orders be enforced by the OCS Enooaen police station.
3. The grounds in support of the application is that there is a Judgment of the court (E.M Washe, J.) delivered on 22nd September 2022, where plaintiffs were to grant the defendant vacant possession of Transmara/Mapashi/329.
4. That 2 years have lapsed since the order was issued and the plaintiffs are yet to comply.
5. That the Plaintiffs/Respondents continue to use, cultivate and lease out the property despite the orders prohibiting them to do so.
6. Application is supported by the supporting affidavit of Williamson Onyancha Gisore who reiterates the grounds in support of the application, and has annexed a copy of the Judgment in this matter, as well as a copy of a Ruling by the Court of Appeal in Civil Application E066/2022 which sought stay



of execution of the Judgment and which Ruling dismissed the application for stay of execution dated 17.10.2022.

7. The application is opposed by the Replying affidavit of Ntetia Ene Kortot, who deposes that: -
 - i. The Applicant has not demonstrated that he was obstructed to enter the suit property and generally deposes that they are not in disobedience of the court orders, they being law abiding citizens.
8. Upon consideration of the application, it is not disputed that there is a Judgment of the court which decreed the Respondent to hand over possession to the Applicant and which prohibited the Respondent from interfering with the quiet possession of the Defendant forthwith.
9. It is not in dispute that a stay of execution application was dismissed by the Court of Appeal.
10. Upon further considerations of the application the rival affidavits and submissions filed in respect of this application, the court frames the following as the issues for determination?
 - i. What is the nature of the application before court.
 - ii. Whether the application is merited.
 - iii. What orders ought to issue.
 - iv. Who bears the cost of the application?
11. On issue number 1, although prayer 1 of the application seeks to have the Respondents held in contempt of court, prayers 2 and 3 basically seek execution of the Judgment. In effect the application before court is seeking to enforce and/or execute the Judgment delivered on 22.09.2022, hence it is an execution application.
12. On issue number 2, whether the application is merited, having found that the application seeks execution of the Judgment delivered on 22.09.2022, it is the court's view that the Civil Procedure Act and Rules has specific provisions for enforcement and execution of court decrees. For vacant possessions execution is done through the Deputy Registrar of the court who issues warrants to give vacant possession to the court bailiff.
13. The Applicant has not demonstrated that he implored the said provisions and executed the decree and the Respondents have re-entered the same, the application as drawn and filed is set to circumvent the said procedure, but as was noted in the decisions in the case of Speaker of National Assembly Vs. Njenga Karume, "where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or by an Act of parliament, that procedure should be strictly followed" having failed to execute the said Judgment as provided in law, the Applicant cannot circumvent the same by filing of this execution application disguised as a contempt application.
14. Accordingly, court finds that the application is not merited and the same is hereby dismissed.
15. The decree holder should use the prescribed procedures under the Civil Procedure Rules to execute the Judgment and the decree of the court.
16. The Application dated 28.10.2024 is thus dismissed with no orders as to costs.

DATED AT KILGORIS THIS 29TH DAY OF MAY, 2025.

HON. M.N MWANYALE.

JUDGE



In the presence of

CA – Emmanuel/Sylvia

Ms. Onchweri for the Applicant

Mr. Ole Kamwaro for the Respondent

