



**Njenga v Kariuki & another (Environment & Land Case
323 of 2015) [2025] KEELC 4238 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4238 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 323 OF 2015**

JA MOGENI, J

MAY 28, 2025

BETWEEN

RUTH GATHONI NJENGA PLAINTIFF

AND

ANDREW MIRARA KARIUKI 1ST RESPONDENT

KAHAWA WEST INVESTMENT COMPANY 2ND RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Motion Application dated 8/10/2024 stated to be brought pursuant to the provisions of Section 24 of the *National Police Service Act*, Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling laws. The Application seeks for orders that:-
 - a. That the Honorable Court be pleased to issue an order directing the Officer in Charge Ruiru Police Station to provide security to the Applicant during execution of the Decree in ELC No. 323 of 2015 dated 9th December 2022.
 - b. That costs of this Application be borne by the Judgment Debtor.
2. The grounds of the Application as shown on the face of the Notice of Motion are that Judgement was entered in favour of the Applicant on 9/12/2022. That the Respondents were on 22/08/2024 issued with a Notice to Vacate the parcel of land and remove the fence but this has not been complied with.
3. The Application is supported by the averments contained in the Supporting Affidavit of Ruth Gathoni Njenga the Applicant and the annexures thereto.
4. In response to the Application, the Respondent filed his Replying Affidavit sworn on 20/10/2024. He deposed that Application is misconceived and laced with untruths as he has on several occasions sought



to engage the Plaintiff/Applicant with a view to settling the issues raised in the Notice to Vacate and the final Decree but the Plaintiff has always avoided and or neglected to agree to mediate.

5. The Respondent contends that he has discovered recently that the land parcel number Plot No. S90 situate at Githurai Ruiru does not in fact exist as the huge chug on which the parcel is allegedly located is Title Number Ruiru Kiu Block 7/131 containing by measurements Three nought decimal nine nine five hectares (3.995 HA) or thereabout which belongs to one Anna Nyokabi Kenyatta and not the 2nd Defendant from whom the Plaintiff purports to have purchased as per the annexure dated 24th October 2024.
6. That after the Judgment he discovered that the suit property belongs to one Anna Nyokabi Kenyatta who has requested the residents to vacate her land. That as a result of the Resident's Association engagements with the owner of the land, all the members of the association agreed to enter into Sale Agreement for Sale of the resultant parcels and pay up for the land upon successful subdivision of this land.
7. He avers that he realized that he had been swindled by the 2nd Defendant and that he is a squatter awaiting subdivision in order to enter into a Sale Agreement. That the Applicant not being a member of the Residents' Association may not know about the ongoing discussions that Title Number Ruiru Kiu Block 7/131 containing by measurements Three nought decimal nine nine five hectares (3.995 HA) or thereabout belongs to one Anna Nyokabi Kenyatta and not the 2nd Defendant.
8. Further that this being a Court of equity it does not issue orders in vain. In other words if the Court were to issue the orders for the implementation of its Decree the same shall be in vain as Plot No. S90 situate at Githurai Ruiru does not exist, the Plaintiff has no relationship with the owner of the said property and neither does the 2nd Defendant with the owner of the said piece of land.
9. That the best remedy for the Plaintiff is an order of Specific Performance and/ or refund of purchase price and compensation as against the 2nd Defendant.
10. At the same time the Respondent states that he has also become aware of existence of ELC Suit No. 502 Of 2010 (Os) Francis Njuru Ngugi Vs Anne Nyokabi Kenyatta And Kkristina Wambui Pratt in which the Director of the 2nd Defendant Francis Njuru Ngugi had sued the said owner of Title Number Ruiru Kiu Block 7/131 Anna Nyokabi Kenyatta for an order of Specific Performance. Which suit was compromised by way of a consent between Anna Nyokabi Kenyatta and the 2nd Defendant where parties agreed as follows:

“That by Consent:

 - i. The suit is hereby marked as settled with no Orders as to costs;
 - ii. The Defendants do forthwith refund the Plaintiff the sum of Kshs. 1,600,000 being in full, final and in all-inclusive settlement of the Plaintiff claim against the Defendants.”
11. It is the Respondent's contention that the 2nd Defendant's Director who was at the time represented by the firm of Kimani Kahete & Company Advocates who to this day represent the 2nd Defendant is guilty of non-disclosure of material facts and had not disclosed all the material facts during the hearing of this case, the Court would have arrived at a totally different outcome; in fact a fair and reasonable outcome. He further avers that he is as much a victim of the 2nd Defendant's dishonest conduct as the Plaintiff.



12. The Appellant prayed for dismissal of the Plaintiff's Application and/ or stay the same awaiting filing of the Respondent's Application for review.
13. In response the Plaintiff filed a Supplementary Affidavit sworn on 17/11/2024 and averred that the 1st Defendant has introduced new issues that were not raised during trial and he is seeking to re-litigate the case in an Application for execution of a valid Decree that has not been set aside or stayed.
14. It is her averment that the issues raised in the Replying Affidavit cannot be dealt with and determined in the Application seeking Police assistance in execution of the Decree. Further that the 1st Defendant has not demonstrated to this Honourable Court in any way that Plot No. S.90 situated in Githurai does not exist or that the same is located on the parcel of land Title Number Ruiru Kiu Block 7/131, and his averments remain as mere allegations with no factual basis. At the same time it is her contention that the 1st Defendant has not lodged an appeal against the Judgment of this Honourable Court and it is only just that the Plaintiff be allowed to enjoy the fruits of her Judgment.
15. At the same time, the 1st Defendant has also not made an Application to Review or set aside the Judgment of this Honourable Court, and the same therefore remains enforceable. Likewise there are no orders for stay of execution of the Judgment and/or Decree of this Honourable Court and therefore the Plaintiff is at liberty to proceed with execution. Thus the Plaintiff prays for granting of the prayers for Police assistance to enable the Plaintiff/Applicant successfully execute the Decree.
16. The Application was argued by way of written submissions. The Applicant filed written submissions dated 19/11/2024 through the firm of Mwaniki Gachoka & Co Advocates. The Respondent did not file any submissions.
17. There is no order of stay of execution in place.
18. The Court in its Judgment ordered the Respondent to remove the fence erected on the suit property failing which the Plaintiffs be authorized to do so and the costs thereof shall be met by both the 1st and 2nd Defendants.
19. The Applicant averred that she later served the Respondent with an Eviction Notice dated 22/8/2024 but the notice has not been complied with.
20. In the absence of an order of stay of execution of the Judgment and in view of the provisions of Order 42 Rule 6(1) of the Civil Procedure Rules 2010, the terms of the Judgment and the eviction Notice served, I find that the prayer for an eviction order is merited.
21. The next relief sought in the Application is for an order directing the OCS Ruiru Police Station to provide security during the eviction exercise. I find that the prayer is merited in order to maintain law and order, and to ensure security during the execution.
22. For the foretasted reasons I find that the Notice of Motion Application dated 8/10/2024 is merited and allow it as follows:-
 1. An order for the eviction of the 1st and 2nd Respondents from the suit land is hereby issued. The Respondents to vacate and hand over vacant possession of the suit land parcel as decreed in the Judgment dated 6/07/2022 in default of which warrant of eviction shall issue for the forceful eviction of the Respondent from the suit land by a Court Bailiff or duly Licensed Auctioneer and the costs shall be borne by the Respondents.
 2. The OCS Ruiru Police Station to provide security and maintain peace and order during the eviction of the Defendants from suit property.



3. Costs to the Application awarded to the Applicant.
4. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28TH DAY OF MAY 2025
VIA MICROSOFT TEAMS.**

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MOGENI J

JUDGE

In the presence of:

Ms. Nkatha holding brief for Mr. Gachoka for the Plaintiff/Applicant

1st Defendant – Absent

2nd Defendant – Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

