



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Civil Suit 388 of 1997**

**KARIUKI MUKONO.....1<sup>ST</sup> PLAINTIFF**

**JOHN MUNYIRI.....2<sup>ND</sup> PLAINTIFF**

**JAMES WAWERU.....3<sup>RD</sup> PLAINTIFF**

**KYORA CHARCOAL DUMP**

**SELF HELP GROUP.....4<sup>TH</sup> PLAINTIFF**

**(All suing on their own behalf and on behalf of 23 others)**

**VERSUS**

**NAIROBI CITY COUNCIL.....1<sup>ST</sup> DEFENDANT**

**CHURCH COMMISSIONERS FOR KENYA.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Applicant seeks an order by its application of the 14/8/2003 that:

1. The Plaintiff be forcibly evicted from the 2nd Defendant’s parcel of land known as Kyoga Crescent Maringo, Nairobi.
2. That the officer commanding Station Jogoo Road Police Station do supervise the said eviction and provide the security needed during the eviction exercise.

Mr. Gitau opposed the application as he submits that firstly, the wrong provisions had been relied on for execution of the decree.

In my judgment of the 29/8/2002 I made an order that the Plaintiffs give vacant possession of the Plot to the 2nd Defendant on the 1st day of December 2002. In the supporting affidavit it is deponed that the Plaintiffs and their agents and servants have refused and /or failed to vacate the 2nd Defendant’s parcel of land.

This is not disputed by the Respondent. Mr. Gitau informed the court that an application for stay of execution had been made. That application which has not been heard yet cannot constitute a reason for not complying with the order made. Secondly, he submitted that as no prayer for eviction had been

claimed in the counterclaim, it could not be asked for in this application.

What, however was ordered was vacant possession of the suit premises be handed over on the 31/12/2002 some two years ago. The Respondents by having failed to obey this order are in contempt of court. However, no application to commit the Respondent to civil jail has been made.

In order to dispose of this matter, I order that the Application for stay be heard before me as soon as a date is available.

Depending on the outcome of that application I will defer making orders in this application which is stood over until the application for stay has been heard.

**DATED and DELIVERED at Nairobi on 4th February 2005**

**P.J RANSLEY**

**JUDGE**