



REPUBLIC OF KENYA



Mahulo (Suing on her Behalf and as the Administrator of the Estate of Marcelina Amolo Mahulo) v Okello & 4 others (Environment & Land Case 150 of 2014) [2025] KEELC 1174 (KLR) (10 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1174 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 150 OF 2014
SO OKONG'O, J
MARCH 10, 2025**

BETWEEN

**GRACE AYUGI MAHULO PLAINTIFF
SUING ON HER BEHALF AND AS THE ADMINISTRATOR OF THE ESTATE
OF MARCELINA AMOLO MAHULO**

AND

**SAMUEL OKELLO 1ST DEFENDANT
GEORGE OCHIENG 2ND DEFENDANT
LAMECK ARODI 3RD DEFENDANT
MWANAISHA TUNDUKA 4TH DEFENDANT
BRIGIT ODERA 5TH DEFENDANT**

RULING

1. The full facts of this case are set out in the judgment delivered herein on 19th June 2024. The Plaintiff brought this suit against the Defendants through a plaint dated 31st May 2014. The Plaintiff averred that the Plaintiff and one, Marcelina Amolo Mahulo, deceased (hereinafter referred to only as “the deceased”), were the registered owners of all that parcel of land known as Kisumu/Kanyakwar “A”/27 (hereinafter referred to only as “the suit property”). The Plaintiff averred that the Defendants, who had no proprietary interest in the suit property, were occupying the same illegally and had erected structures thereon, which they were using for business and residential purposes. The Plaintiff averred that the Defendants had denied her access and use of the property, as a result of which she had suffered and continued to suffer loss and damage. The Plaintiff sought judgment against the Defendants jointly and severally for;



- a. A declaration that the Plaintiff was the proprietor of the suit property and that the Defendants jointly and severally were trespassers thereon;
 - b. An order of eviction of the Defendants from the suit property;
 - c. A permanent injunction restraining the Defendants jointly and severally by themselves and/or through their agents and/or servants and/or anyone claiming title under them from remaining on, occupying, using, developing, or in any other way interfering with the Plaintiff's proprietary rights over the suit property;
 - d. Mesne profits for loss of use at the rate of Kshs. 30,000/- per month with effect from 2nd August 2012 until possession of the suit property is surrendered to the Plaintiff; and
 - e. Costs of the suit and interest.
2. The 1st and 3rd Defendants filed a joint statement of defence on 22nd July 2014, in which they denied occupying the suit property unlawfully. The 1st and 3rd Defendants also denied having blocked the Plaintiff from occupying and using the suit property. The 2nd, 4th and 5th Defendants did not enter appearance to the Summons to enter appearance. Interlocutory judgment was entered against them on 3rd July 2014. On 18th January 2023, the 5th Defendant applied for leave to enter an appearance and file a defence out of time, but the application was dismissed on 9th February 2023.
 3. In the judgment delivered on 19th June 2024, the court declared that the Plaintiff was the owner of the suit property and that the Defendants were trespassers thereon. The court ordered the Defendants to vacate the suit property within 30 days from the date of the judgment in default of which they be evicted therefrom. The court also awarded the Plaintiff mesne profits of Kshs. 1,000,000/-, and the costs of the suit.
 4. On 21st August 2024, the 5th Defendant filed an application for stay of execution of the said judgment pending appeal on the ground that she was dissatisfied with the said judgment and intended to appeal against the same to the Court of Appeal. The 5th Defendant averred that her appeal had a high chance of success. The 5th Defendant averred that the court had ordered among others that the 5th Defendant be evicted from the suit property which eviction if carried out would be irreversible and would cause her irreparable harm. The application for stay of execution was opposed by the Plaintiff. The court dismissed the 5th Defendant's application in a ruling delivered on 31st October 2024. The court stated as follows in part:

“I am satisfied that the Applicant's application was brought without unreasonable delay. However, I am not satisfied that the Applicant stands to suffer substantial loss if the stay sought is not granted. As I mentioned earlier in this ruling the Applicant (5th Defendant) did not defend this suit. Having not defended the suit, this court is unable to establish the nature of the interest if any that the 5th Defendant has on the suit property which needs to be protected by an order of stay.”
 5. What is before me now is the Plaintiff's application dated 15th August 2024 in which the Plaintiff has sought an order that a warrant/order be issued for the eviction of the Defendants, their agents, servants or employees from the suit property and that the same be executed by the Court Bailiff/ Auctioneer under the supervision of the Officer Commanding Station (OCS), Kondele Police Station. The application that was supported by the affidavit of the Plaintiff sworn on 15th August 2024 was brought on the ground that the court had in its judgment delivered on 19th June 2024 ordered the Defendants to vacate the suit property within 30 days, in default of which the Plaintiff was to be at



liberty to apply for warrants for their forceful eviction from the property. The Plaintiff averred that the 30-day grace period given to the Defendants to vacate the suit property had expired, and they had not vacated the property. The Plaintiff averred that the Defendants' failure to vacate the suit property amounted to a disobedience of the order for possession given in her favour by the court.

6. The application was opposed by the 5th Defendant through a replying affidavit purportedly sworn on 18th February 2025. The purported affidavit was not commissioned. For whatever it is worth, the 5th Defendant opposed the Plaintiff's application on the same grounds that she had based her application for a stay of execution pending appeal. The 5th Defendant averred that she was dissatisfied with the judgment of the court and had preferred an appeal against the same to the Court of Appeal. The 5th Defendant averred that her appeal had good chances of success and that the same would be rendered nugatory if she was evicted from the suit property. The 5th Defendant averred that she stood to suffer substantial loss if she was evicted from the suit property.
7. The application was argued on 20th February 2025. The Plaintiff submitted that there was no justification for the Defendants' continued occupation of the suit property, the time given to them to vacate the same having lapsed. The 5th Defendant, in her reply, submitted that she had preferred an appeal against the judgment of the court and should be allowed time to prosecute the appeal.
8. I have considered the Plaintiff's application together with the supporting affidavit. I have also considered what the 5th Defendant has filed in court as her replying affidavit. In the judgment dated 19th June 2024, the court ordered that:

“The Defendants shall vacate and hand over possession of the property known as Kisumu/Kanyakwar “A”/27 to the Plaintiff within 30 days from the date hereof in default of which the Plaintiff shall be at liberty to apply for warrants for their forceful eviction from the property.”

9. It is common ground that the judgment of this court has not been stayed, varied or set aside. It is also common ground that the time given to the Defendants to vacate the suit property has lapsed and that the Defendants have not vacated the property. As mentioned earlier, apart from the 5th Defendant, the other Defendants did not oppose the application. The 5th Defendant has not given reasonable justification for her continued occupation of the suit property. The fact that the 5th Defendant was dissatisfied with the judgment of the court and has preferred an appeal to the Court of Appeal against the same does not excuse the 5th Defendant's failure to comply with the said judgment after her application for a stay of execution of the judgment was dismissed by the court.
10. In the absence of any justification for the Defendants' continued occupation of the suit property after the expiry of the 30 days given to them to vacate, the Plaintiff's application seeking their forceful eviction from the property has merit. However, it was not necessary to make a formal application to the Court for the warrant sought. What the court had in mind in its order was the normal application for execution with a request for a warrant of eviction. The application should have been handled by the Deputy Registrar as part of the execution process that was to commence after the taxation of the Plaintiff's bill of costs. Now that a formal application is before me, I hereby order that after the taxation of the Plaintiff's bill of costs, the Deputy Registrar shall issue warrants for the eviction of the Defendants from the suit property on the application for execution by the Plaintiff if the Defendants would not have vacated the property when such application is made. The O.C.S Kondele Police Station shall provide security to the Court Bailiff/Auctioneer who shall carry out the eviction. The Court Bailiff/Auctioneer carrying out the eviction of the Defendants from the suit property shall ensure the



provisions of Section 152G of the [Land Act](#), 2012 are complied with. Each party shall bear its costs of the application dated August 15, 2024.

DELIVERED AND DATED AT KISUMU ON THIS 10TH DAY OF MARCH 2025.

S. OKONG'O

JUDGE

Ruling delivered in the open court in the presence of;

N/A for the Plaintiff

N/A for the 1st and 3rd Defendants

Mr. Anyul h/b for Ms. Odhong for the 5th Defendant

Ms. J. Omondi-Court Assistant

