



**Wadawe v Newa (Environment & Land Case 716 of 2015)
[2025] KEELC 5002 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 716 OF 2015**

E ASATI, J

JULY 3, 2025

BETWEEN

JACOB ORENY WADAWE PLAINTIFF

AND

JOSEPH ABONG'O NEWA DEFENDANT

RULING

1. The application before court for determination is the Notice of Motion dated 5th March, 2025 brought by the plaintiff seeking for orders that:
 - a. the court do issue directions to the Officer Commanding Station (OCS) Pap Onditi police station to accompany the Decree Holder and supervise the eviction of Joseph Abongo Newa from Land parcel No. Kemnwa Keyo/ogoro/499 in execution of the decree issued on 24th October 2017.
 - b. the costs of the application be provided for.
2. The grounds upon which the application was made are that judgement was delivered on 24th October, 2017 and the Defendant ordered to vacate the suit land parcel number Kemnwa Keyo/ogoro/499 and deliver vacant possession to the Plaintiff within 45 days from the date of the order. That despite several request and demands, the Defendant has refused and/or neglected to vacate the land thereby causing the Plaintiff great loss and damage.
3. The application was opposed on the grounds that the application is fatally defective and ought to be struck out with costs for lack of Supporting Affidavit, litigation has to come to an end, this honourable court has rendered its judgement and rulings, if the Plaintiff/Applicant is dissatisfied, the correct approach is to appeal, the prayers sought in the defective application are in the nature of execution. If the Plaintiff, feels that the orders of this Honourable court have not been complied with, he should approach the court through the correct procedure for execution, the Defendant/Respondent has since



vacated all the portions of land deemed to have been encroached as per the survey report and the Plaintiff/Applicant has either refused to take occupancy and/or misguided about the judgement of this honourable court and that the application is an abuse of the court's process.

4. Perusal of the court record shows that indeed judgement was delivered on 24th October 2017 by Hon. Justice J.O. Olola who ordered that;
 - a. The District Surveyor Nyando do carry out a survey to ascertain the boundaries of all that parcel of land known as Kemnwa Keyo/ogoro/499 and ascertain the extent of encroachment thereon by the Defendant within 30 days of the date of judgement.
 - b. That the Defendant by himself, his agent and/or servant do vacate all portions of land parcel No. Kemnwa Keyo/ogoro/499 within 45 days of the date of the judgement and/or be evicted therefrom forthwith.
 - c. A permanent injunction restraining the Defendant by himself, servants and/or agent from entering occupying remaining on cultivating, developing or in any other way using or interfering with the Plaintiff's peaceful possession of the said land parcel No. Kemnwa Keyo/ogoro/499 or any portion thereof
 - d. Costs of the survey and the suit to be paid by the Defendant.
5. The court record shows further that the Applicant filed an application dated 22nd April, 2022 seeking similar orders as the current application which application was allowed on 12th May, 2022.
6. The record show further that the Applicant filed another application dated 15th September, 2022 similar to the present application which application is pending to date.
7. There is also in the file a survey report dated 28th May, 2024 conducted pursuant to the judgement.
8. The Defendant's case is that he has vacated the encroached area and handed over vacant possession to the Plaintiff. The plaintiff contends that the Defendant has refused and/or neglected to move out of the land
9. Now that the area of encroachment has been ascertained vide the survey report and as there is an eviction order in place and an order for the OCS to provide security, the Plaintiff should proceed to have the eviction order executed if indeed the defendant has not vacated the encroached area shown in the survey report. The court bailiff who will be conducting the eviction to be guided by the survey report dated 28th May 2024 filed in court by the Sub-County Land Surveyor Nyando and the provisions of section 152G of the Land Act. The OCS Pap Onditi police station to provide the necessary security during the eviction exercise. No order as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 3RD JULY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

The Plaintiff/ Applicant present in person.



N/A for the Defendant/Respondent.

