



REPUBLIC OF KENYA



KENYA LAW
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**Matiliku v Makau (Environment & Land Case 71 of 2019)
[2024] KEELC 798 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 798 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 71 OF 2019
TW MURIGI, J
FEBRUARY 14, 2024**

BETWEEN

JANE MUTHINI MATILIKU PLAINTIFF

AND

VERONICAH MAKAU DEFENDANT

RULING

1. Before me for determination is the Notice Motion dated 6th June, 2023 brought under Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Order 40 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law in which the Applicant seeks the following orders: -
 1. Spent.
 2. That this Honourable Court be pleased to direct the Officer Commanding Police Station (OCS) Mukuyuni Police Station to provide security to enforce the orders of eviction issued by this Honourable Court on 29th August, 2022 against the Defendant to evict and compel her to remove the offending structures that have encroached on the Plaintiff's parcel of land Number Ukia/Utaati/159.
 3. That the Defendant/Respondent be ordered to pay for the costs of the auctioneer.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Jane Muthini Matiliku sworn on even date.

The Applicant's Case

3. The Applicant averred that the court in its judgment delivered on 23/03/2022 issued an order of eviction against the Defendant compelling her to remove the offending structures from land parcel No. Ukia/Utaati/159. She further averred that no appeal has been lodged against the said judgment.



4. The Applicant argued that she will suffer irreparable loss if the orders sought are not granted since the Defendant is still encroaching and building structures on the suit property.
5. Though duly served, the Respondent did not file any response to the application.

Analysis And Determination

6. Having considered the application in light of the pleadings, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
7. The Plaintiff instituted this suit vide a Plaint dated 19th September, 2019 and sought the following orders against the Defendant: -
 - i. An order of permanent injunction restraining the Defendant from encroaching or in any other manner interfering with the Plaintiff's land parcel number Ukia/utaati/159.
 - ii. An order of eviction against the Defendant compelling her to remove the offending structures that have encroached into the Plaintiff's land parcel number Ukia/utaati/159.
 - iii. Costs of this suit.
8. The Defendant did not enter appearance or file a Defence within the stipulated time. Interlocutory judgment was entered on 8th October, 2021.
9. This matter proceeded for hearing as undefended on 17th November, 2021 and thereafter, Judgment was delivered on 23rd March, 2022 in the following terms:-
 - a. An order of permanent injunction be and is hereby issued restraining the Defendant from encroaching or in any other manner interfering with the Plaintiff's land parcel number Ukia/utaati/159.
 - b. An order of eviction be and is hereby issued against the Defendant compelling her to remove the offending structures that have encroached into the Plaintiff's parcel of land number Ukia/utaati/159.
 - c. The Plaintiff is awarded costs of the suit.
10. There is already a judgment in favour of the Applicant and it appears that the Respondent has not adhered to the terms of the judgment.
11. The judgment delivered on 23rd March, 2022 has neither been set aside nor challenged in any forum. It is clear that since the judgment was delivered on 23rd March 2022 and a decree extracted on 25th April 2023, the Respondent has not given the Applicant vacant possession of the suit property. This court finds and holds that the Applicant is entitled to the fruits of her judgment.
12. The upshot of the foregoing is that the application dated 6th June, 2023 is merited and the same is allowed in the following terms:-
 - i. The Officer Commanding Police Station(OCS) Mukuyuni Police Station is hereby directed to provide security to enforce orders of eviction issued by this court on 23rd March 2022 compelling the Defendant to remove the offending structures that have encroached into the Plaintiff's parcel of land No. Ukia/Utaati/159
 - ii. The Defendant/Respondent to bear the costs of this application



RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS COURT THIS 14TH DAY OF FEBRUARY, 2024.

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HON. T. MURIGI

JUDGE

In The Presence of:

Court Assistant – Mr. Kwemboi.

Kithuka for the Applicant.

