



Sumba & another v Sagwe & another (Environment & Land Case 493 of 2015) [2024] KEELC 3373 (KLR) (8 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 493 OF 2015**

M SILA, J

APRIL 8, 2024

BETWEEN

PETER WILLS O. SUMBA 1ST PLAINTIFF

JOHN BOSCO MBOGA 2ND PLAINTIFF

AND

MARIA GESARE SAGWE 1ST DEFENDANT

LAWRENCE OMARIBA NYAATA 2ND DEFENDANT

RULING

(Application for an order of eviction and an alternative prayer for the arrest of the defendants for not giving vacant possession of the disputed land; judgment given in favour of the plaintiffs for the land; defendants still retaining possession; order of eviction allowed)

1. The application before me is that dated 13 February 2024 filed by the 2nd plaintiff/deed holder. The substantive prayer in the application is for an order of eviction to issue against the respondents so as to remove them from the Plot No. 27, Nyakoe Market, in line with the decree herein. The applicant also seeks orders to have the order of eviction implemented by M/s Edy Bright Auctioneers and for the Officer Commanding Nyakoe Police Station to provide security to facilitate execution of the order. There is an alternative prayer to have the respondent cited and punished for disobeying the decree of the court and if this is allowed for issue of a warrant of arrest against the respondents for committal to jail for a period not exceeding 6 months. Despite being served the respondents did not file anything to oppose the application and did not appear at the inter partes hearing of the same. The applicant has averred that he is now the sole remaining plaintiff as the 1st plaintiff is deceased.
2. I have gone through the record. I note that the applicant commenced this suit alongside Peter Willis O. Simba, vide a plaint filed on 4 November 2015. In it the plaintiffs averred that they were the legitimate allottees of the Plot No. 27 Nyakoe Market having been allotted the plot on 20 February 1968. They



averred that they retained quiet possession of the plot until May 2012 when they discovered that the respondents had fraudulently subdivided the plot into two, identified as Plot 27A and 27B, Nyakoe Market. In the suit, they asked for a declaration that the subdivision of the original plot was fraudulent; rectification of the register in respect of Plot No. 27; a permanent injunction to restrain the respondents from the plot; general damages for trespass and costs. The respondents filed defence to oppose the suit and the case proceeded for hearing before my predecessor, Mutungi J, culminating in a judgment delivered on 23 October 2019. The judgment was in favour of the plaintiffs. The court found that the records show that the plaintiffs are the true owners of the Plot No. 27 Nyakoe Market and that the respondents had no legal interest in it. The court found that the purported subdivision of the Plot was unlawful and null and void and that the respondents were in illegal occupation of the plot. The court also awarded general damages in the sum of Kshs. 100,000/= together with costs and interest. I see that a Notice of Appeal was filed but there is no indication that the substantive appeal was ever filed.

3. In this application, the applicant avers that the respondents have continued to remain in possession of the suit plot and are leasing out the plot which is in utter disregard to the judgment of the court. He thus seeks the orders that he has asked for.
4. As I had earlier mentioned, nothing was filed to oppose the application despite the same being served.
5. Given the background that I have laid out above, I have no reason not to allow the application. I will issue an order directed at the respondents that they give vacant possession voluntarily within seven (7) days from the date hereof. In default, an eviction order to issue and the applicant be at liberty to appoint any authorized firm of court brokers/auctioneers to execute the eviction order. I also order the OCS, Nyakoe Police Station to provide security to the auctioneer if eviction must take place. Any costs related to the auction process be taxed upon eviction and be paid by the respondents. Having given the above order, I see no need to deal with the alternative prayer. The applicant is however at liberty to seek that prayer in case the eviction fails. The applicant will also have the costs of this application.
6. Orders accordingly.

DATED AND DELIVERED THIS 8 DAY OF APRIL 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

In the presence of:

Mr. Mulisa for the applicant

N/A on part of M/s C.M Ayienda & Co for the respondents

Court Assistant – Aphline Owiwa

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