



Jacka & another v Jacka & 3 others (Environment & Land Case 96 of 2013) [2024] KEELC 6535 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6535 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 96 OF 2013**

**BN OLAO, J
OCTOBER 8, 2024**

BETWEEN

CONCEPTA NASPWONI JACKA 1ST PLAINTIFF

JANET AWUOR JACKA 2ND PLAINTIFF

AND

LYDIA AWUOR JACKA 1ST DEFENDANT

PAUL OMILIA JACKA 2ND DEFENDANT

AMOS OKWAROI JACKA 3RD DEFENDANT

SIMON OMANYALA JACKA 4TH DEFENDANT

RULING

1. By an amended plaint dated 4th March 2016 and filed herein on 11th march 2016, Concepta Nasipwoni Jacka And Janet Awuori Jacka (the 1st and 2nd Plaintiffs respectively) impleaded Lydia Awuori Jacka, Paul Omilia, Amos Okwaroi And Simon Omanyala (the 1st to 4th Defendants respectively). They sought judgment against the defendants in the following terms in paragraphs 10 and 10(A) of the said amended plaint:

10: “The 1st plaintiff’s claim against the defendants is for a declaratory order that the 1st plaintiff is the absolute owner of the land parcels NO N. Teso/Kocholia/2270 and 2271, an eviction order directed at the defendants, their relatives, agents and nominees from the suit land and a permanent injunction restraining the defendants, her agents, relatives and nominees from invading, encroaching, tiling and/or interfering with the plaintiff’s occupation of land parcels NO N. Teso/Kocholia/2270 & 2271. An order for removal and/or cancellation of the caution lodged on the aforesaid parcels of land by the 1st Defendant.”



10(A): “The 2nd plaintiff’s claim against the defendants is for an order of removal and/or cancellation of caution lodged by the 1st defendant on land parcel number N. Teso/Kocholia/2268 and for a declaratory order that she is the absolute registered owner of land parcel number N. Teso/Kocholia/2268 in trust for her children.”

The defendants filed a defence to the plaintiffs’ claim and a counter-claim in which they sought orders that all the parcels of land arising from the sub-divisions of land parcel NO N. Teso/Kocholia/625 and which was done without their involvement be cancelled.

2. The suit was heard by Kaniaru J who, vide a judgment delivered on 13th November 2018 allowed the plaintiffs’ claim as per paragraphs 10 and 10A of the amended plaint as set out above. The judge dismissed the defendants’ counter claim and directed that this being a family dispute, each should bear their own costs.
3. The defendants were aggrieved by that judgment and filed at the court of Appeal at Kisumu, Civil Appeal NO 4 of 2019. Having heard the appeal, the court Kiage, Tuiyott And Joel Ngugi,JJA delivered their judgment on 9th May 2024 and dismissed the appeal with no orders as to costs.
4. The plaintiffs have now approached this court vide their Notice of Motion dated 4th June 2024. They seek the following orders:
 1. Spent
 2. That the Honourable Court be pleased to allow the firm of Messrs Akiro & Associates Advocates to come on record for the 1st plaintiff.
 3. That the Honourable Court be pleased to issue an order directing the Registrar of Busia Lands Registry to effect removal and/or cancellation of the caution lodged and registered on land parcel NO N. Teso/Kocholia/2270 and 2271 in line with the orders arising out of the judgment of the court delivered on 13th November 2018.
 4. That the Honourable Court be pleased to issue an order directing the Officer Commanding Station (OCS) Malaba Police Station to supervise the eviction of the Defendants herein from the land parcels NO N. Teso/Kocholia 2270 and 2271 in line with orders arising out of the judgment delivered on 13th November 2018.
 5. That costs of the application be awarded to the plaintiff.
5. The application is based on the grounds set out therein and supported by the affidavit of the 1st plaintiff. It is premised only on Order 51 of the Civil Procedure Rules but I do not think that is fatal.
6. The gravamen of the application is that this court delivered a judgment on 13th November 2018 in favour of the plaintiffs which, inter alia, required the defendants to vacate form the land parcels North Teso/Kocholia/2270 and 2271 (the suit parcels). The defendants were aggrieved by that judgement and sought a stay of execution and also filed at the Court of Appeal in Kisumu Civil Appeal NO 4 of 2019. That appeal was dismissed on 9th May 2024. However, the defendants have refused to vacate the suit parcels and have also vowed to make repossession thereof difficult and impossible. Unless the orders sought herein are granted, the plaintiffs will continue to suffer irreparable harm.
7. The following documents are annexed to the supporting affidavit:
 1. Copy of the judgment delivered herein 13th November 2018 by Kaniaru J.
 2. Copy of the ruling delivered herein on 25th July 2019 by Kaniaru J.



3. Copy of the judgment delivered by the Court of Appeal on 9th May 2024 dismissing the defendant's appeal in Civil Appeal NO 4 of 2019.

When the application was placed before Cheron J on 6th June 2024, the Judge directed that it be canvassed by way of written submissions. Although the defendants were allowed 14 days from 6th June 2024 to file their responses and submissions, they had not done so by the time the matter was listed before me for directions. Notwithstanding service upon them of the application and submissions, the Defendant did not file any responses. The application is therefore not opposed.

8. I have considered the application, un-opposed as it is as well as the submissions filed by Mr Akiro instructed by the firm of Akiro & Associates Advocates for the plaintiffs.
9. The record shows that the plaintiffs were originally represented by Mr Murunga Of J. O. Makali & Company Advocates upto the time the Judgment herein was delivered. That firm was served with this application together with submissions. No response has been filed on behalf of the defendants. Prayer NO (2) is hereby allowed.
10. With regard to prayer NO (3), the decree issued on 3rd January 2019 is clear that the 1st Plaintiffs' claim seeking the orders that she be declared the absolute owner of the land parcels No North Teso/Kocholia/2270 and 2271, the eviction of the defendants from the said parcels of land, the defendants be enjoined therefrom and the removal of the cautions lodged on the titles were granted. A similar order sought by the 2nd plaintiff for the declaration that she is the owner of the land parcel No North Teso/Kocholia/2268 was also granted including an order for the removal of the caution lodged on the said title. Once the decree was drawn capturing those reliefs, I do not think the plaintiffs were required to approach this court seeking the removal of those cautions in the manner in which they have done now seeking the orders which they seek with regard to the titles to the suit land. That is not surprising because, having perused the decree herein, it was not drawn by the plaintiffs as is required under the provisions of Order 21 Rule 8 (2) of the *Civil Procedure Rules*. Other than being signed by the Deputy Registrar, the said decree was most likely drawn by an officer in the Registry of this court. The above provision reads:

“Any party in a suit in the High Court may prepare a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay; and if the draft is approved by the parties, it shall be submitted to the registrar who, if satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly.”

Unless the decree is properly drawn in accordance with the remedies being sought by the parties, it will always be difficult for the organs which have to implement it to appreciate what is required of them by the parties and the court. Decrees should therefore not be signed just as a matter of course, they are a very important step in the execution process.

11. Having said so, the import of the judgment delivered on 13th November 2018 is that the caution lodged on the land parcels No North Teso/Kocholia/2270 and 2271 can only be removed either by the defendants who lodged them or by the Land Registrar. And since the defendants have refused to do so, it is proper that this Court directs the registrar to lift the caution. I notice that although the judgment also touched on the land parcel North Teso/Kocholia/2268, the Applicants have confined themselves to the land parcels No North Teso/Kocholia/2270 and 2271.
12. Prayer No 3 is hereby allowed.



13. With regard to prayer No 4, it is clear from paragraph 7 of the supporting affidavit that;

“... the defendants/respondents herein have not only refused to vacate the parcels but also vowed to make the repossession in execution of the lawful judgment of this court both difficult and impossible thereby requiring Police intervention.”

Ideally, the Police should not be involved in the execution of civil processes. In the case of *Kamau Mucuba v The Ripples Ltd C.a.* Civil Application No NBI 186 of 1992 [1990 – 1994 EA 388] (1993 KLR 35), Kwach JA expressed himself on that issue as follows:

“The only valid criticism of the order of the judge as of now, but which does not swing the scale one way or the other in this application is the direction that the assistance of the police should be enlisted to secure compliance by the applicant. The police should never be involved in securing compliance with Court Orders as there is a specific provision for the enforcement of an injunction under *Order 21 Rule 28 of the Civil Procedure Rules.*”

Therefore, whereas the Police have no role to play in the execution of civil processes, that is not to say that they cannot be called in to provide security and ensure that law and order is maintained during those process. Officers of the court have been known to lose their lives during such processes. The court must take judicial notice of that and also of the fact that evictions of trespassers from land is prone with much dangers both to the parties and at times, even to the police themselves. Having been evicted from the suit land, the defendants are now trespassers thereon. And given the un-rebutted claim that the defendants have “vowed to make the repossession in execution of the lawful judgment of this court both difficult and impossible,” it is only fair and in the interest of justice that the Police be directed to provide security during that process. In any case, Section 24 of the *National Police Service Act* No 11A of 2011 obligates the Police, where necessary, to provide security and maintain law and order. It provides under Section 24(a), (b) and (c) that the functions of the Kenya Police include:

- a. “Provision of assistance to the public when in need.
- b. Maintenance of law and order.
- c. Preservation of peace”.

In the circumstances, prayer No 4 of the Notice of Motion is well merited. I allow it.

14. On the issue of costs, both Kaniaru J and the Court of Appeal guided by the fact that this is a family dispute, decided not to penalize either party with an order of costs. I shall take the same route and order that the parties meet their own costs.

15. The up-shot of all the above is that having considered the Notice of Motion dated 4th June 2024, I make the following disposal orders:

1. The firm of Akiro & Associates Advocates are granted leave to come on record for the 1st Plaintiff.
2. An order is hereby issued directing the Land Registrar Busia to effect the removal and/or cancellation of the cautions lodged and registered on the land parcels No North Teso/ Kocholia/2270 and 2271.
3. An order is hereby issued directing the Officer Commanding Malaba Police Station (OCS) to provide security and ensure that there is law and order during the eviction of the defendants, their relatives, agents and all those claiming through them from the land parcels No North



Teso/Kocholia/2270 and 2271. I wish to add that the said eviction be conducted in accordance with the law and in a humane manner without destruction of any property.

4. Each party to meet their own costs.

RULING DATED, SIGNED AND DELIVERED ON THIS 8TH DAY OF OCTOBER 2024 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

