



**Kaigera (Suing as the Legal Representative of M’Nabea Baituru alias Nabea Baituru – Deceased) v Ruiru Rwarera Secondary School (Sued through Board of Management & another (Environment & Land Case E10 of 2022) [2024] KEELC 6729 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6729 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E10 OF 2022  
CK NZILI, J  
OCTOBER 9, 2024**

**BETWEEN**

**BONFACE KAIGERA ..... APPLICANT  
SUING AS THE LEGAL REPRESENTATIVE OF M’NABEA BAITURU ALIAS  
NABEA BAITURU – DECEASED**

**AND**

**RUIRI RWARERA SECONDARY SCHOOL (SUED THROUGH BOARD OF  
MANAGEMENT) ..... 1<sup>ST</sup> RESPONDENT  
AFRICA INDEPENDENT PENTECOSTAL CHURCH OF KENYA – RUIRI  
RWARERA (SUED THROUGH REGISTERED TRUSTEES) .. 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before the Court is an application dated 29.7.2024 seeking an order for the provision of security by the Officer Commanding Station (OCS) Tutua Police station for the decree-holder to implement the decree of this Court. The reasons are contained on the face of the application and in the affidavit sworn by Muriiki Boniface Kaigera on 29.7.2024. The applicant avers that the judgment debtor has refused to vacate and render vacant possession voluntarily, yet there was no active stay of the decree; hence have been prejudiced for not reaping the fruits of their judgment. The applicants aver that the 2<sup>nd</sup> respondent had been given three months to comply with the decree.
2. It is averred that due to the structures on the suit land, the applicant is unable to access or utilize the decree and property, and any attempts to do so have been met with much hostility.
3. The applicants aver that even though the 2<sup>nd</sup> respondent preferred an appeal at the Court of Appeal Nyeri a while ago, it had sought for them to cede to it the church area, which they agreed to give him



- ¼ an acre, but the 2<sup>nd</sup> respondent had refused to take up the offer resorting to chest-thumping, issuing threats and incitement of the local community by peddling lies against them.
4. The applicant urges the Court to grant the orders sought; otherwise, the execution of the decree will not interfere with or prejudice the running of the 1<sup>st</sup> respondent as it is cozy within its more than three acres of land separate and distinct from the suit land.
  5. The application is opposed by a replying affidavit of Julius Kariri sworn on 13.9.2024. It is averred that there are two matters on appeal, namely Nyeri Court of Appeal Civil Application No. E114 of 2024, out of which stay was granted by consent.
  6. Further, the 2<sup>nd</sup> respondent averred that, as indicated by the applicant, the parties were engaged in active and well-progressing amicable settlement negotiations geared toward achieving a peaceful co-existence. It attached copies of the application at the Court of Appeal, replying affidavit by the applicant thereof and copies of correspondence letters dated 20.6.2024 and 3.7.2024.
  7. The 2<sup>nd</sup> respondent relies on written submissions dated 30.9.2024. It is submitted that there is a stay of execution at the Court of Appeal by consent, which is not disputed by the applicants and which has not been discharged. It is submitted that the record of appeal has been filed and served, and as per the correspondences attached, the parties were negotiating a possible settlement.
  8. The 2<sup>nd</sup> respondent urges the court to find that it became *functus officio* once the Court of Appeal becomes seized of the applications for stay and the pending appeal.
  9. What the applicant is seeking is the provision of security to execute a decree. He has expressed his fears and frustrations about accessing the decreed land. Further, the applicant has averred that despite the pending appeal, an application for stay and an offer to cede a quarter of an acre to the 2<sup>nd</sup> respondent, the latter has not accepted the offer or in the alternative, voluntarily handed over vacant possession.
  10. Instead the applicant aver that the 2<sup>nd</sup> respondent has become hostile to him and has incited the locals making it impossible to access and utilize the decreed land. Other than alleging that there is a stay order, the replying affidavit has not attached a copy of a stay order at the Court of Appeal, if at all any exists. A court order is either in existence or not. The applicant has denied its existence. It is the 2<sup>nd</sup> respondent who is insisting that there is one, yet it has not been displayed before this Court. As to the possible settlement, the letter dated 3.7.2024 acknowledged that the 2<sup>nd</sup> respondent received on 20.6.2024. Evidence of a letter communicating the acceptance of the olive branch extended to the 2<sup>nd</sup> respondent on 21.6.2024 and at the filing of the replying affidavit on 13.9.2024 is missing. The easiest thing would have been to attach the acceptance letter and a copy of the stay order by consent. The date when the offer was accepted and the date when the stay order was issued are not indicated.
  11. The upshot is that I find the prayers sought in the application merited. The OCS Tutua Police Station is directed to provide enough security towards the implementation of the decree of this court against the 2<sup>nd</sup> respondent. Costs to the applicant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. C K NZILI**

**JUDGE**

In presence of

CA Kananu



Mokua for the applicant

Mawira for C.P Mbaabu for 2<sup>nd</sup> defendant

AG for the 1<sup>st</sup> defendant

