



**Odondi v Shikuku (Environment & Land Case E005 of 2020)
[2024] KEELC 13553 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13553 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E005 OF 2020**

BN OLAO, J

DECEMBER 3, 2024

BETWEEN

JACOB ERNEST AMBALA ODONDI PLAINTIFF

AND

VIOLET SHIKUKU DEFENDANT

RULING

1. Vide a judgment delivered on 9th December 2021 by Omollo J in favour of Jacob Ernest Ambala Odondi (the Plaintiff/Applicant) it was decreed as follows:
 - a. An order of permanent injunction restraining the Defendant by herself or by her agents, servants or otherwise howsoever from entering upon, remaining on or continuing in occupation of and/or otherwise dealing with or in any way whatsoever interfering with the Plaintiff's access to, use of and quiet possession of the suit property.
 - b. An order of mandatory injunction directing the Defendant whether by herself or by her agents, servants or otherwise howsoever to forthwith remove and demolish all the dwelling structures erected on part of the suit property within 90 days of being served with the decree herein.
 - c. In default of complying with (b), the offending structures shall be removed by the Plaintiff at the Defendant's costs and expense.
 - d. The Officer Commanding Busia Police Station to provide security during the process of eviction.
 - e. The Defendant to pay the Plaintiff Kshs.50,000 as general damages for trespass.
 - f. The Plaintiff's prayer for mesne profits is declined.
 - g. The Plaintiff is awarded costs of the suit.



The Plaintiff's costs were subsequently assessed by the Deputy Registrar and taxed in the sum of Kshs.105,535. A Decree was issued on 8th November 2022.

2. No appeal appears to have been filed by the Defendant/Respondent.
3. The Defendant/Respondent did not comply with the Order that she removes the structures from the suit property within 90 days.
4. The Plaintiff/Applicant has now moved to this Court vide his Notice of Motion dated 21st August 2024. He seeks the following substantive order:
 1. Spent.
 2. That the Officer Commanding (OCS) Adungosi Police Station do and is hereby ordered to assist in enforcing the Court decree dated 8th November 2022.
 3. That costs of this application be provided for.
5. The application is premised on the provisions of Sections 12 of the Landlord and tenants (Shops, Hotels and Catering Establishments Act) as well as the other enabling provisions of the law. It is founded on the grounds therein and supported by the Plaintiff/Applicant's affidavit of even date.
6. The basis of the application is that following the judgment issued herein on 9th December 2021 and subsequent decree dated 8th November 2022, the Officer Commanding [OCS] Busia Police Station took long, due to Government bureaucracies, to implement the order of providing assistance to him and advised that the matter was within Adungosi Police Station. When the Plaintiff/Applicant approached the Officer Commanding [OCS] Adungosi Police Station for assistance, the said officer insisted on a Court order hence this application.
7. Annexed to the application are the following documents:
 1. Decree dated 8th November 2022.
 2. Copy of a letter dated 13th May 2024 by the Deputy Registrar of this Court and addressed to the Officer Commanding [OCS] Busia Police Station verifying that the Decree is authentic.
 3. A letter dated 26th April 2024 from the Officer Commanding [OCS] Busia Police Station and addressed to the Deputy Registrar of this Court to verify the authenticity of the Decree herein.

Though served with the application which came up for hearing on 17th September 2024, MR AMBALA counsel for the Plaintiff/Applicant informed this Court that the Defendant/Respondent has not filed any response to the application. The same is therefore not opposed.
8. I have considered the application, un-opposed as it is. I also notice from the record that the hearing of the main suit proceeded ex-parte on 27th July 2021 as the Defendant/Respondent did not file any defence.
9. The Plaintiff/Applicant has cited the provisions of the Landlord and Tenants (Shops, Hotels and Catering Establishments Act) CAP 301 Laws of Kenya in support of his application. However, the dispute between the parties, as is clear from the plaint dated 16th September 2020 was a case of trespass on the land parcel No Teso/angoromo/1459. It was not a dispute between a landlord and tenant. Therefore, the Landlord and Tenants [Shops, Hotels and Catering Establishments Act] was not applicable. Nonetheless, in line with the provisions of Article 159(2)(d) of *the Constitution* 2010, that defect is not fatal.



10. It is also clear from paragraph (d) of the judgment as replicated in paragraph (3) of the Decree that the Court directed the Officer Commanding (OCS) Busia Police Station to assist in effecting the decree by providing security. It has turned out however, that the property in dispute is within the jurisdiction of Adungosi Police Station and not Busia Police Station where the Decree was directed. A copy of the Decree issued herein and which is annexed to the application shows that the Defendant/Respondent was served with the same on 8th November 2022 at 3.37 pm. she has not filed any response to the application and that can only mean that she does not intend to vacate the suit property as directed in the judgment. Ordinarily, the Police should not be involved in an eviction process – *Kamau Micuha -v- The Ripples Ltd* 1993 KLR 35. However, the role of the Police under Section 24 of the *National Police Service Act* includes to assist the public when in need, maintenance of law and order, preservation of peace and protection of life and property. The judgment herein restricted the role of the Police “to provide security during the process of execution” and nothing else. The Officer Commanding [OCS] Adungosi Police Station must therefore confine himself to that role.
11. Ultimately therefore and having considered the Notice of Motion dated 21st August 2024, this Court directs that:
1. The Officer Commanding [OCS] Adungosi Police Station to comply with paragraph (3) of the Decree issued on 8th November 2022 by only providing security during the execution process and should not be involved in executing the decree which should be the responsibility of the relevant organ.
 2. The relevant provisions of Section 152 of the *Land Act* be strictly complied with.
 3. No orders as to costs.

BOAZ N. OLAO

JUDGE

3RD DECEMBER 2024

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 3RD DAY OF DECEMBER 2024.

BOAZ N. OLAO

JUDGE

3RD DECEMBER 2024

Further order:

It is further directed that since the Defendant/Respondent did not file any response, this ruling be served upon her forthwith for her information.

BOAZ N. OLAO

JUDGE

3RD DECEMBER 2024

