



**Onchomba v Kenyanya & 2 others (Civil Suit 95 of 2007)
[2023] KEELC 559 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 559 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
CIVIL SUIT 95 OF 2007
M SILA, J
FEBRUARY 2, 2023**

BETWEEN

JOYCE NYANSIABOKA ONCHOMBA PLAINTIFF

AND

JOSEPH KENYANYA 1ST DEFENDANT

ROSA KENYANYA 2ND DEFENDANT

MARIA KENYANYA 3RD DEFENDANT

RULING

(Application for eviction; judgment given in favour of the plaintiff whereby the defendants were ordered to vacate the suit land; defendant having failed to vacate the land; application allowed)

1. The application before me is that dated July 21, 2022 filed by the successful plaintiff. The application seeks orders to have the applicant enforce the judgment delivered on February 7, 2014 and for the court to issue an eviction order to be executed by M/s Odongo Investment Auctioneers against the defendants/respondents. The applicant also seeks an order directing the OCS Tabaka Police Station to provide security to facilitate execution of the eviction order. Despite being served the defendants have filed nothing to oppose the application and their counsel failed to attend court when the application was heard *inter partes*. In the affidavit in support of the application, the applicant has averred that she filed suit *inter alia* seeking eviction of the respondents from the land parcel South Mugirango/Bosinange/2855 (the suit land) and that judgment was given in her favour on February 7, 2014. Thereafter a decree was extracted. She has pointed out that the judgment gave the respondents 6 months from February 7, 2014 to vacate the land which have since lapsed without the respondents moving out. She has averred that Odongo Investment Auctioneers is a duly licenced auctioneer and she has annexed his licence.



2. I have gone through the record. Indeed, the applicant did file suit against the respondents on August 20, 2007 wherein she *inter alia* sought orders to have the respondents evicted from the suit land. The case was heard and judgment delivered by Okong'o J on February 7, 2014. The judgment was in favour of the applicant. In the judgment, the court ordered the respondents to vacate and hand over possession of the suit land within 6 months thereof and an order of permanent injunction was issued restraining the respondents from the suit land once they vacate. There was also an order that the respondents pay the sum of Kshs 30,000/= as damages for trespass. I have seen a notice of appeal lodged on February 26, 2014 but I have no evidence of any appeal being filed nor is there any order of stay of execution of the judgment. The judgment has thus remained unexecuted since the year 2014.
3. I have no reason why the application should not be allowed. The respondents have refused to voluntarily vacate the suit land despite the judgment of the court. The applicant is entitled to enjoy the fruits of the judgment. The only recourse the applicant has is to have the respondents evicted. I allow this application. The applicant is at liberty to evict the respondents from the land parcel South Mugirango/Bosinange/2855. The applicant is at liberty to appoint any authorized court broker/auctioneer to execute the eviction order. I hereby order the OCS Tabaka Police Station to provide the requisite security. The respondents will bear the costs of this application and any costs that the applicant may incur in executing the decree.
4. Orders accordingly.

DATED AND DELIVERED THIS 2 DAY OF FEBRUARY 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

