



**Matiliku v Makau (Environment & Land Case 71 of 2019)
[2023] KEELC 16111 (KLR) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 71 OF 2019**

**TW MURIGI, J
MARCH 8, 2023**

BETWEEN

JANE MUTHINI MATILIKU PLAINTIFF

AND

VERONICAH MAKAU DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated September 14, 2022, brought under the provisions of sections 1A, 1B and 63 of the Civil Procedure Act in addition to order 40 of the Civil Procedure Rules, 2010 in which the applicant seeks the following orders: -
 - i. Spent.
 - ii. That this honourable court be pleased to direct the Officer Commanding Police Station (OCS) Mukuyuni Police Station to provide security to enforce the orders of eviction issued by this honourable court on August 29, 2022 against the defendant to evict and compel her to remove the offending structures that have encroached on the plaintiff's parcel of land Number Ukia/Utaati/159.
 - iii. That the defendant/respondent be ordered to pay for the costs of the auctioneer.

The applicant's Case

2. The application is premised on grounds appearing on its face together with the supporting affidavit of the applicant sworn on even date.
3. The applicant averred that *vide* judgment delivered on March 23, 2022 the court issued an order of eviction against the defendant herein. That following the delivery of the judgment, the applicant extracted the order on August 29, 2022. She averred that the said judgment has never been appealed.



4. The applicant further averred that it is necessary that the eviction be carried out because the defendant is still encroaching and building offending structures on the suit property Parcel. The applicant argued that she will suffer irreparable loss if the orders sought are not granted.
5. The respondent did not respond to the application although she was duly served.

Analysis And Determination

6. Having considered the application and the affidavit, I find that the only issue that arises for determination is whether the applicant is entitled to the orders sought.
7. The plaintiff instituted the instant suit against the defendant vide a plaint dated December 19, 2019 and sought the following orders:-
 - i. An order of permanent injunction restraining the defendant from encroaching or in any other manner interfering with the plaintiff's land parcel number Ukia/utaati/159.
 - ii. An order of eviction against the defendant compelling him to remove the offending structures that have encroached into the plaintiff's land parcel number Ukia/utaati/159.
 - iii. Costs of this suit.
8. The defendant did not enter appearance or file a defence. Interlocutory judgment was entered on October 8, 2021.
9. This matter proceeded for hearing as undefended on November 17, 2021. thereafter, judgment was delivered on March 23, 2022 in the following terms:-
 - a. A permanent injunction be and is hereby issued restraining the defendant from encroaching or in any other manner interfering with the plaintiff's land parcel number Ukia/utaati/159.
 - b. An order of eviction be and is hereby issued against the defendant compelling her to remove the offending structures that have encroached into the plaintiff's parcel of land number Ukia/utaati/159.
 - c. The plaintiff is awarded costs of the suit.
10. The applicant deposes that the respondent has continued to encroach and has built offending structures on the suit property. No response was filed to the application despite the same being served upon the respondent.
11. There is already a judgment in favour of the applicant and it appears that the respondent has not adhered to the terms of the judgment.
12. The judgment delivered on March 23, 2022 has neither been set aside nor challenged in any way. However, it is trite law that for a judgment of a court to be enforced or executed there must be a decree which must be extracted from the said Judgment issued by the court.
13. In the present suit, the applicant has not extracted a decree from the judgment of the court.
14. Section 2 of the *Civil Procedure Act* defines a decree as follows:-

“decree means the formal expression of an adjudication which so far as regards the court expressly it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final, it includes the



striking out of a plaint and the determination of any question within section 34 or section 91.”

15. The applicant has extracted an order and not the decree from the judgment. An order is not a legal instrument through which a judgment can be enforced.
16. Having failed to extract the decree from the judgment, I find that the applicant cannot enforce the judgment of the court.
17. The upshot of the foregoing is that the application dated September 14, 2022 is dismissed with no orders as to costs.

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HON T MURIGI

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS COURT THIS 8TH DAY OF MARCH, 2023.

IN THE PRESENCE OF: -

Court Assistant – Mr Kwemboi.

No appearance for the applicant.

