



Mwaura v Njuguna & 3 others (Environment and Land Miscellaneous Application E108 of 2022) [2023] KEELC 16220 (KLR) (2 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16220 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E108 OF 2022
LN MBUGUA, J
MARCH 2, 2023

BETWEEN

ALICE NYAMBURA MWAURA APPLICANT

AND

PETER KAMAU NJUGUNA 1ST RESPONDENT

JOHN KURIA 2ND RESPONDENT

MUTHAMI NJUGUNA 3RD RESPONDENT

WANJIRU NJUGUNA 4TH RESPONDENT

RULING

1. This miscellaneous suit was filed by way of a Notice of motion application dated 13.6.2022 seeking orders to appoint a court bailiff to assist in eviction of the Respondents as well as orders that the OCS / Deputy Mutuini base Police Station be ordered to provide security during the exercise.
2. The application is based on grounds on its face and on the supporting affidavit sworn on 13.6.2022 by the Applicant. She deposes that she filed ELC 06 OF 2019 SPM’S Court Kikuyu seeking to evict the Respondent and was granted eviction orders against the Respondents herein on 14.9.2021. The Respondents were served with the eviction orders but have refused to vacate the suit premises.
3. I find that the decree sought to be executed was issued in another Court being, Senior Magistrate’s Court at Kikuyu. In the case of *Michael Bartenge v Stephen Bartenge* [2007] eKLR, the court made reference to the provisions of Section 30 of the *Civil Procedure Act* which provides that;

“A decree may be executed either by the court which passed it or by the court to which it is sent for execution.”



4. Section 34 (1) of the *Civil Procedure Act* further provide that;
 - “(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”
5. There are no orders transferring the decree of the trial court to this court as the law contemplates, thus this Court has no jurisdiction to order execution of a decree issued in another Court.
6. It is noted that this court had called for the Kikuyu SPM’S court file no. ELC 6 OF 2019 for perusal. The records therein indicate that the Applicant herein had made an application to execute the decree which application was determined by that court. This application is therefore an abuse of the Court process.
7. Finally, I find the Notice of motion application dated 13.6.2022 before this court as well as the supporting affidavit bears the heading. “In The Chief Magistrate’s Court At Milimani.” It follows that there is no proper suit filed before this court.
8. This entire suit is hereby dismissed with no orders as to costs. The file Kikuyu ELC No. 6 Of 2019 is to be transmitted back to its origin at Kikuyu SPM’s Court forthwith.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Miss Mwaura for the Applicant

Court assistant: Vanilla

