



**Ooko v Oloo & 2 others (Environment & Land Case 437 of 2015)  
[2023] KEELC 16181 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16181 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 437 OF 2015**

**E ASATI, J  
MARCH 9, 2023**

**BETWEEN**

**GEORGE OPONDO OOKO ..... PLAINTIFF**

**AND**

**PIUS OLOO ..... 1<sup>ST</sup> DEFENDANT**

**SYLVESTER WANJALA ..... 2<sup>ND</sup> DEFENDANT**

**SUSAN ADOYO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the plaintiff/decree holder’s notice of motion application dated November 28, 2022 brought pursuant to the provisions of sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and order 22 rule 82 of the *Civil Procedure Rules 2010*. The application seeks for orders that;
  - i. The court issues an eviction order against the defendants herein, evicting the defendants from land parcel No Kisumu/Kanyakwar “A”/134.
  - ii. The court issues an order directing the OCS Kondele police station to provide the bailiff/auctioneers herein with security for purposes of maintaining peace and order while executing the court’s judgement dated July 10, 2018 and the decree by way of eviction.
  - iii. That the costs of the application be in the cause.
2. The grounds upon which the application was brought were that judgement was on March 23, 2022 entered in favour of the plaintiff/applicant as against the defendants/respondents. That costs in the suit have been taxed and a certificate of costs issued. That notice of entry of judgement was served upon the defendants on March 28, 2022. That though the court ordered in the judgement that the defendants vacate and hand over vacant possession of the suit land to the plaintiff and further that



the defendants be restrained from remaining on or occupying the suit land, the defendants have not vacated the suit land to date.

That the plaintiff intends to execute the judgement but is apprehensive that the defendants/respondents might employ goons to block and/or interfere with the process. That it is therefore in the interest of justice that police provide security to maintain peace and order.

3. To the supporting affidavit sworn by the plaintiff on August 28, 2022 were annexed copies of the judgement dated March 23, 2022, decree, certificate of costs dated October 21, 2022 and notice of entry of judgement dated March 27, 2022 and duly received in the office of Madialo & Co Advocates on March 28, 2022.
4. The application was not opposed. Affidavit of service sworn by Kennedy Ochieng Omollo on January 18, 2023 shows that the defendants'/ respondents' Advocates were served with the application and hearing notice dated January 17, 2023 on January 17, 2023. Hence the application was heard *ex-parte* on February 22, 2023.
5. I have considered the notice of motion, the supporting affidavit and annexures thereto and the oral submissions made by Counsel for the plaintiff/applicant on February 22, 2023. I note from the judgement that the court already made an order awarding vacant possession of the suit property to the plaintiff. The applicant has deponed that the defendants/respondents have not moved from the suit land in spite of the judgement. Order 22 rule 82 under which the application is made empowers the court to put a decree holder into possession of the suit property- where there is resistance or obstruction. The defendants/respondents who were duly served with the application did not respond. In the premises, I am satisfied that the obstruction and or resistance by the defendants/respondents is without any just cause. I find that an order of eviction is necessary, in the circumstances of this case, so as to remove the defendants from the suit land and place the applicant there onto in execution of the judgment.
6. The second prayer in the application is for an order that police provide security during the eviction exercise. The role of the police service in an eviction process has to be distinguished from that of the court bailiffs and auctioneers. In *Mariko Ndwiga vs Edithe Muthanje* [2020]eKLR the court in discussing the role of the police in eviction exercise observed that:-

“...a distinction has to be drawn between their role as agents of eviction and their role as law enforcement officers. The court’s understanding is that whereas the eviction order is to be executed by the appointed court bailiffs or auctioneers, the role of the police service shall be confined to maintaining law and order to enable the court bailiff to perform their duties. The OCS of Runyenjes police station is not expected to undertake the eviction himself. What the respondent prayed for is merely provision of security. This court is satisfied that the order for provision of security is merited.”

It is the applicant’s case herein that he is apprehensive that the defendants/respondents may block and/or interfere with the process.

7. I find that the application has merit. I allow the application and make the following orders;
  - a. The respondent to vacate and hand over vacant possession of the suit land parcel No Kisumu/ Kanyakwar “A”/134 within 30 days of this ruling, in default of which warrant of eviction shall issue for the forceful eviction of the defendants/respondents from the suit land by a court bailiff or auctioneer.



- b. The OCS Kondele police station to provide security to the court bailiff/auctioneer for purposes of maintaining peace and order during the eviction of the defendants/respondents from land parcel No LR Kisumu/Kanyakwar Ä/134.
- c. No orders as to costs.

Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Ajevi -Court Assistant.

Ken Omollo for the Plaintiff/Applicant

No appearance for the Defendants/Respondents

