



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 259 OF 2016

THE CHAIRMAN B.O.M OF VIKUTSA PRIMARY SCHOOL....PLAINTIFF/RESPONDENT

VERSUS

MOSES ABWOBA

SABETI MUDEKU

DAVID AMUHANDA

LUKA MUDEGU

DANIEL LUVA MUDEKU

BENSON TIGU MUDEKU.....DEFENDANTS/APPLICANTS

RULING

The application is dated 1st February 2021 and is brought under section 3a of the Civil Procedure Act seeking the following orders;

1. That an eviction order be issued to forcefully evict the respondent from Land Parcel Kakamega/Ileho/726 and illegal structure therein be demolished.
2. That the officer commanding Shisasari Police Station be directed to provide security during the execution of the Eviction orders issued herein against the respondent herein.
3. That the caution and caveat placed on land parcel No. Kakamega/Ileho/726 to restrict dealings on this parcel of land be removed.
4. That costs be provided for.

It is based on the annexed affidavit David Amuhanda and the following general grounds that the respondent/plaintiffs herein filed this case claiming land parcel Kakamega/Ileho/726 under adverse possession. That the case was heard and determined vide judgment delivered on 16th December, 2020 wherein the suit was struck out for lack of merit. That the respondent/plaintiff herein have gone ahead to hire goons who illegally and forcefully evicted the applicants/defendants from a portion of their land parcel L.R. Kakamega/Ileho/726. That the respondent are now forcefully occupying part of the applicants' land parcel L.R. Kakamega/Ileho/726. That they reported the matter to officer commanding Shisasari Police Station who directed us to come to court and obtain eviction orders to enable him take action against the respondent.

The respondent submitted that he is aware that judgment was delivered on 16th December, 2020 by this honourable court in which it struck out their application for lack of merit and the court in its judgment faulted the deponent of the affidavit in support of the application for lack of capacity to bring the suit on behalf of the school. That the honourable court never dealt with the merits and demerits of the suit. That the applicant in their response to the originating summons never sought for the prayers of eviction nor did they file any counter claim against the respondent herein. That even in the replying affidavit of David Amuhanda Alenga sworn on 27th February, 2017 in defence to the originating summons there was no prayer for eviction or any other prayer other than that the application should be dismissed with costs.

This court has considered the application and the submissions therein. The application is based on the grounds that the respondent/plaintiff herein filed this case claiming land parcel Kakamega/Ileho/726 under adverse possession. That the case was heard and determined vide

judgment delivered on 16th December, 2020 wherein the suit was struck out for lack of merit. The applicants now seek an eviction order be issued to forcefully evict the respondent from Land Parcel Kakamega/Ileho/726 and illegal structure therein be demolished. I find that this was not pleaded in the defendants' case and hence such orders cannot be issued in this case. This claim was for adverse possession by the plaintiff which failed and the suit was struck out. I find this application is not merited and the same is dismissed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 21ST APRIL 2021.

N.A. MATHEKA

JUDGE