



**Onduso v Nyamboga & 2 others (Appeal 6 of 2021)
[2023] KEELC 17193 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
APPEAL 6 OF 2021**

**M SILA, J
MAY 3, 2023**

BETWEEN

JAMES NYANGWARA ONDUSO APPELLANT

AND

LUKAS A. NYAMBOGA 1ST RESPONDENT

ZACHARY NYAMBEGA MANYINSA 2ND RESPONDENT

MOIGE NYAMBEGA 3RD RESPONDENT

RULING

1. The application before me is that dated 20 March 2023 filed by the appellant. The application seeks orders to have the OCS, Nyatiego Police Station, to provide security to the applicant to enable him evict the respondents from the land parcel Central Kitutu/Mwamosioma/3262 (the suit land). The application is supported by the affidavit of the applicant. He has deposed *inter alia* that he successfully lodged this appeal to contest the decision of the Magistrates' Court and it was held that he is the registered owner of the suit land. He avers that the respondents are in possession of the land and there is need for eviction. He thus seeks the order for provision of security.
2. The respondents filed nothing to oppose the application despite being served. I have given due consideration to the application.
3. I observe that the appellant had filed suit against the respondents in the Chief Magistrates' Court, being Kisii CMCC No. 148 of 2019, where he pleaded to be the registered proprietor of the suit land. He pleaded that in August 2019, the respondents entered the suit land and prevented him from farming it. In his suit, he asked for the following orders :-
 - a. A declaration that the land parcel Central Kitutu/Mwamosioma/3262 belongs to him (as plaintiff).



- b. A permanent injunction against the defendants or any persons/agent acting for them.
 - c. Costs and interest.
 - d. Any other and/or further relief that the court may deem just to grant.
4. The suit was heard before the Magistrates' Court and was dismissed. The applicant then filed an appeal to this court. The appeal was heard by my predecessor, Onyango J, who delivered judgment on 27 July 2022. She allowed the appeal and substituted the judgment of the Magistrates' Court with an order allowing the appellant's claim in the lower court together with costs. What it means is that the applicant now has orders in his favour as prayed in the plaint pursuant to the judgment of this court.
 5. It follows that what the applicant needs to do is to now extract and execute the decree in the Magistrate's Court as his claim therein was allowed through the judgment of this court. Upon extracting the decree, it is the Magistrate's Court to supervise the process of execution. This court is not the executing court for a decree of the Magistrate's Court.
 6. The applicant is therefore wrong in approaching this court for orders relating to execution of the decree of the Magistrate's Court. This application needs to be filed before the Magistrates' Court and not before this court.
 7. For the above reasons, I dismiss the application but make no orders as to costs.
 8. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 3RD DAY OF MAY 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

