



**Tonui & 2 others v Tonui & another (Environment & Land Case 187 of 2015) [2023] KEELC 18612 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18612 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 187 OF 2015**

**MC OUNDO, J**

**JULY 6, 2023**

**BETWEEN**

**JOHN KIPKEMOI TONUI ..... 1<sup>ST</sup> PLAINTIFF**

**JOEL KIPLANGAT TONUI ..... 2<sup>ND</sup> PLAINTIFF**

**SMAEL KIPRONO TONUI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SAMUEL TONUI ..... 1<sup>ST</sup> DEFENDANT**

**PHILIP TONUI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me for determination is an application by way of Notice of motion dated the November 25, 2022 brought pursuant to the provisions of Order 22 Rule 20 of the *Civil Procedure Rules* and Sections 3 and 3A of the *Civil Procedure Act* where the Applicants seek orders to have the Respondents, their agents and/or servants or any other person claiming under them, evicted from the land parcel Nos Kericho/Getarwet/935, Kericho/Getarwet /936, Kericho/Getarwet /937, Kericho/Getarwet /938 and Kericho/Getarwet /940 (all hereafter referred to variously as “disputed parcels of land” or “suit parcels of land”) so as to deliver vacant possession to the Applicants in compliance with the Judgment of the court dated October 13, 2022.
2. The Applicant has also sought for orders that the OCS Roret Police Station do provide security to Indomitable Auctioneers during the eviction exercise and for costs of the application.
3. The application is unopposed and was disposed of by way of written submissions wherein the Applicants submitted that the Respondents were on their parcels of land illegally as they had not complied with the Judgment and decree issued by the court. That the presence of the Respondents on the suit land parcels had caused a lot of tension, anguish and loss to the Applicants.



4. That the Respondents had duly been served with the application herein but had failed to oppose the same and therefore their action of not complying with the court order had violated the Applicants / Plaintiffs' constitutional right who were now seeking that the court grants an order of eviction against the Respondent/Defendants, their agents and/or servants or any person(s) claiming under them from the Applicant's parcels of land known as Kericho/Getarwet/935, Kericho/Getarwet /936, Kericho/Getarwet /937, Kericho/Getarwet /938 and Kericho/Getarwet /940.
5. That the application was merited and the same be allowed with costs in the best interest of justice.

**Determination.**

6. I have considered the Applicants' application as well as the fact that the same was not opposed. Judgment in this matter had been delivered on the October 13, 2022 wherein the court had found that the Respondents herein were trespassers onto the Applicants' parcels of land. The court had subsequently issued orders of injunction restraining the Respondents or their agents from interfering, trespassing, developing or dealing adversely with the disputed parcels of land. That Defendants/ Respondents had been duly served with the said decree and to date, there has been no appeal and/or stay of execution of the orders preferred.
7. I find that the time frame for which the Respondents ought to have filed an Appeal challenging the decision of the court has lapsed and therefor it is within the Applicants' right to seek for the execution of the court's decree as the same cannot be issued in vain. In so doing, the security by the police officers is needed so as to avoid a breach of peace.
8. Since the Respondents have refused and/or ignored to move out of the suit land voluntarily, I have no reason to decline to grant the orders sought in this application. To this effect, I allow it and order the eviction of the Respondents, their agents and/or servants or any other person claiming under them from the land parcels Kericho/Getarwet/935, Kericho/Getarwet /936, Kericho/Getarwet /937, Kericho/Getarwet /938 and Kericho/Getarwet /940 within 30 days from this ruling. The OCS Roret Police Station shall provide security to Indomitable Auctioneers during the eviction exercise.
9. The Applicant shall also have the costs of this application.

Orders accordingly.

**Dated and delivered via Microsoft Teams at Kericho this 6<sup>th</sup> day of July 2023**



**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

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