



REPUBLIC OF KENYA



KENYA LAW
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**Ondari v Obuogi (Environment & Land Case 37 of 2021)
[2023] KEELC 21173 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21173 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE 37 OF 2021
AY KOROSS, J
NOVEMBER 2, 2023**

BETWEEN

SIPROSA ACHIENG ONDARI PLAINTIFF

AND

JOSIAH OKUMU OBUOGI DEFENDANT

RULING

1. Pursuant to the provisions of Articles 40 (1) and 64 of the [Constitution](#) and Sections 26 and 152 (E) of the [Land Act](#), the defendant has filed a notice of motion dated 23/06/2023 seeking the following reliefs: -
 - a. That this honourable court do grant leave to the defendant to forthwith evict, enter upon and repossess the whole of land parcel no. Siaya/Got Agulu/100.
 - b. That the plaintiff herein do deliver vacant possession of land parcel no. Siaya/Got Agulu/100.
 - c. That the OCS Usenge Police Station, Chief Yimbo West location and Assistant Chief Got Agulu sublocation do provide security during the eviction.
 - d. That the costs and expenses occasioned by and incidental to the defendant's entry and repossession of the suit land be borne by the plaintiff.
2. The motion is based on grounds set out on its face and on the affidavit in support thereof deposed by the defendant on 23/06/2023. In it, the defendant contends despite judgment being entered against the plaintiff on the 02/03/2023, she has refused, neglected and failed to vacate land parcel no. Siaya/Got Agulu/100 (suit land).
3. Further, he asserted the plaintiff has been given 90 days to vacate the suit land but has failed to do so. The motion was disposed of by counsel Mr. Nyanga's oral submissions which he made on 04/10/2023. The motion was unopposed.



4. Having considered the defendant's motion, its grounds and supporting affidavit, the single issue for determination is whether the motion is merited.
5. It is noted, court orders, decrees and decisions are not made in vain since it is only by compliance of its orders, that the people of Kenya who have by Article 159 of the Constitution delegated authority to the court, shall have confidence with the court process including the sanctity of its orders. Consequently, its determinations must be obeyed.
6. As far as this case is concerned, in its judgment rendered on 02/03/2023, it dismissed the plaintiff's suit and entered judgment for the defendant who had counterclaimed. In its judgment, some of its final disposal orders were *inter alia*: -
 - a. The plaintiff is hereby granted 90 days from the date of service of the orders of this court to remove herself and her developments from land parcel no. Siaya/Agulu/100 and give the defendant vacant possession and in default, the defendant shall forcefully evict the plaintiff together with her servants or agents.
 - b. A permanent injunction be and is hereby issued restraining the plaintiff, her servants and agents and workers from entering or occupying, constructing, destroying, damaging or dealing whatsoever with land parcel no. Siaya/Agulu/100.
7. In the matter before me, the defendant asserts the plaintiff has failed to adhere to the said disposal orders despite being privy of this court's judgment. However, notwithstanding the plaintiff's counsel was present when this court rendered its decision, there is no evidence the court's decree was served for purposes of instigating commencement of the 90-day period as decreed by this court.
8. In its judgment, the court directed for the eviction process to comply with the provisions of Sections 152B, 152E, 152F, 152G, 152H and 152I of the Land Act. Under Section 152E of the said Act, a party has to serve the trespasser with a three-month eviction notice. In the circumstances of this case and as ordered by this court, 90 days from the date of service of the decree; which has not been done.
9. Justice cuts both ways, the defendant has to serve the decree upon the plaintiff and the plaintiff has to obey the orders of this court. However, notwithstanding the motion is premature since the defendant has not served the decree, by Section 3A of the Civil Procedure Act, this court can issue necessary orders to ensure the ends of justice are met. It would only be prudent for time to start running for purposes of eviction once the decree and the orders that will be issued herein are served upon the plaintiff.
10. It must be noted even if the defendant may hold an eviction order, only appointed court bailiffs can carry out execution of the order. See Section 2 (2)(a) of the Auctioneers Act. During the process, the court bailiffs carry out their execution process while the police's role is usually limited to maintaining law and order. See Section 24 of the National Police Service Act. As it were, the defendant is yet to appoint a court bailiff. However, nothing is wrong with the defendant seeking security at this stage.
11. The upshot of the foregoing is that the court finds merit in the defendant's notice of motion dated 23/06/2023. Costs follow the event and since the defendant was successful in claim, costs are awarded to him. The motion is hence only allowed in the following terms:
 - a. Upon service of the decree of this court and the orders herein, the plaintiff shall within 90 days thereof, remove herself and her developments from land parcel no. Siaya/Agulu/100 and give the defendant vacant possession and in default, the defendant shall forcefully evict the plaintiff together with her servants or agents.



- b. That the OCS Usenge Police Station do provide security during the eviction of the plaintiff together with her servants or agents.
- c. That the costs occasioned by and incidental to the defendant's entry and repossession of land parcel no. Siaya/Agulu/100 shall be borne by the plaintiff.
- d. That the defendant is hereby awarded costs of the application.

DELIVERED AND DATED AT SIAYA THIS 2ND DAY OF NOVEMBER 2023.

HON. A. Y. KOROSS

JUDGE

02/11/2023

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Mr. Nyanga for the defendant

N/A for the plaintiff

Court assistant: Ishmael Orwa

