



**Kathuri v Njogu & 3 others (Environment & Land Case
358 of 2010) [2022] KEELC 34 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 34 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 358 OF 2010
LC KOMINGOI, J
MAY 5, 2022**

BETWEEN

CYRUS GITARI KATHURI APPLICANT

AND

LUCY WANGARI NJOGU RESPONDENT

AND

PETER LEONARD MWANGI 1ST DEFENDANT

CONSOLIDATED BANK OF KENYA LTD 2ND DEFENDANT

EQUITY BANK LIMITED 3RD DEFENDANT

RULING

1. This is the notice of motion dated 31st March 2022 brought under section 3A of the *Civil Procedure Act*, order 22 rule 29(1) of the [Civil Procedure Rules](#), 2010 and article 40 of the *Constitution of Kenya*.
2. It seeks orders;
 1. Spent.
 2. That this honourable court be pleased to issue orders of eviction against the Plaintiff from LR NO 16217/34 at Muthaiga North (hereinafter called “suit property”) to Geoffrey Kangati t/a Kangethe ENT. Auctioneers.
 3. That this honourable court be pleased to order OCS Commanding Police Station Muthaiga Police Station to give security to the Auctioneer while executing the warrants.



4. That the Plaintiff be ordered to pay costs of the eviction exercise that may be incurred by the 3rd Defendant/Applicant
3. The grounds are on the face of the Applicant and are set out in paragraphs 1 to 11.
4. The Application is supported by the affidavit of Cyrus Gitari Kathuri, the 3rd Defendant/Applicant sworn on the 31st March 2022.
5. The application is opposed. There is a replying affidavit sworn by Lucy Wangari Njogu, the Plaintiff/Respondent on the 21st April 2022.
6. On the 20th April 2022, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have considered the affidavit in response, the written submissions and the authorities cited. The issue for determination is whether this application is merited.
8. This court in its judgment dated 14th October 2021 declared the 3rd Defendant/Applicant as the true and absolute owner of LR NO 16217/34 situated at Muthaiga North.
9. The Plaintiff's/Respondent's application for stay of execution of the said judgment was dismissed on 24th March 2022.
10. It is on record that the Plaintiff/Respondent does not reside on the suit property but does subsistence farming. She has also placed a caretaker on the suit property.
11. It is in the interest of justice that the 3rd Defendant/Applicant ought to be left to enjoy the fruits of his judgment.
12. I find that the Plaintiff's/Respondent's replying affidavit is full of mere denials.
13. I find merit in this application and the same is allowed in terms of prayer no 2, 3 and 4 of the Notice of Motion.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 5TH DAY OF MAY 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Njoki for Mr. Okatch for the Plaintiff

Mr. Peter Mwangi the 1st Defendant in person

No appearance for the 2nd, 3rd and 4th Defendants

Steve - Court Assistant

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