



**Mugo & another v Njuguna (Environment & Land Case
15 of 2018) [2022] KEELC 15675 (KLR) (8 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 15 OF 2018**

EC CHERONO, J

JULY 8, 2022

BETWEEN

TERESIA WANGECHI MUGO 1ST PLAINTIFF

JEMIMAH WANJIRU MUGO 2ND PLAINTIFF

AND

LUCY WACUKA NJUGUNA DEFENDANT

RULING

1. By a Notice of Motion dated August 29, 2019, the defendant/applicant moved this court seeking the following orders:-
 1. That this honourable court be pleased to issue forcible eviction orders against the plaintiffs/respondents by themselves, servant, agents or anyone claiming under them from the applicant's L.R Mutira/Kathare/842 measuring 0.40 Hectares.
 2. That the eviction exercise be carried out by a Court bailiff of the honourable court and the O.C.S Baricho Police Station be authorized to provide with security during the eviction day.
 3. That the costs of eviction exercise and the application herein be borne by the plaintiffs/respondents herein.
2. The application is supported by grounds shown on the face of the said application and the affidavit of Lucy Wacuka Njuguna, the defendant/applicant herein. The supporting affidavit has two annexures in further support of the application. By way of a response, the plaintiffs/respondents filed a replying affidavit sworn by Teresiah Wangechi Mugo, the 1st plaintiff/Respondent on October 31, 2019.



Applicants summary of facts

3. The applicant in her affidavit in support of the application stated that respondents had instituted this suit claiming her parcel of land by way of Adverse possession but their claim was dismissed vide an order of this court delivered on 28/6/2019. She stated that the said dismissal order has not been set aside and/or reviewed.
4. The applicant further contends that despite the plaintiffs'/respondents' suit having been dismissed, they have continued to hold on her land and have been cultivating thereon and putting up temporary structures without her consent and in total disregard to her rights as a proprietor of the suit land.

Respondents summary of facts

5. The Respondents opposed the application and stated that the application seeks substantive orders whereas the same is an interlocutory application. They argued that prior to instituting a suit for substantive orders, the applicant ought to issue them sufficient notice to vacate which she has failed.
6. In conclusion, the respondents said that the applicant has approached this court on a wrong footing and in a bid to mislead the court to issue substantive orders in an interlocutory application.

Analysis and decision

7. I have considered the Notice of Motion application dated 29/8/2019, the supporting affidavit and the annexures thereto. I have also considered the replying affidavit and the rival submissions. It is not in dispute that this suit was instituted by the respondents seeking to be declared to have acquired the applicant's suit land parcel No. Mutira/Kathare/842 by way of Adverse possession. The applicant raised a Notice of preliminary objection on grounds that the plaintiffs' suit was *res-judicata*. The court directed that the Notice of preliminary objection be canvassed by way of written submissions. After considering the arguments and submissions by the parties, this court upheld the preliminary objection and dismissed this suit with costs. The respondents are opposing the application arguing that this court is now functus officio and that the applicant ought to have first issued them with sufficient notice to vacate.
8. I find the arguments by the respondent misconceived and untenable, considering that they filed numerous claims over the applicant's land and losing them on merit fairly and squarely. At page 5 of my ruling delivered in this case on 28/6/2019, I made the following observation ;-

-----The plaintiffs in the instant suit were also plaintiffs in HCCC NO. 37 of 2010 (Embu) which is still pending. The same plaintiffs were part of the defendants in PMCC NO. 90 of 2001 (Kerugoya) which after they lost in the judgment were dissatisfied and appealed but the appeal was struck out. Instead of filing a proper appeal, they filed HCCC NO. 37 of 2010 and the instant suit seeking similar orders. The plaintiffs cannot be allowed to go on forever re-litigating the same issues with the same opponent(s) before courts of competent jurisdiction. Litigation must come to an end.”
9. It is not in dispute that the respondents were some of the defendants in Kerugoya PMCC NO. 90 of 2001 which, after they lost in the judgment, preferred an appeal but the appeal was struck out. That was the reason why this suit was struck out for being *res-judicata* vis-a vis Kerugoya PMCC NO 90 of



2001. That order has not been set aside and/or reviewed. Faced with a similar situation, Munyao J. in the case of *Wilson Ndirangu Muruthi vs Charles Sameri Mukuria* (2019) KLR held thus;

There is already judgment in favour of the Applicant and it appears as if the Respondent has not adhered to the terms of the judgment and has refused to vacate the suit land. There is no other option to have the Applicant enjoy the fruits of his judgment other than having the respondent forcefully evicted. I have no reason to deny the applicant what he has asked for in this application. I therefore allow the application. I issue an order for the eviction of the respondent from the suit land parcel Kijabe/Kijabe Block 1/3757. The eviction order may be executed by M/S Tango Auctioneers or any other Auctioneer or court broker that the applicant may appoint. I further order the O.C.S of Mai Mahiu Police Station to supervise the eviction and provide adequate security to the auctioneer/court broker and further ensure that peace and order is maintained during the eviction exercise. The respondent shall shoulder the costs of this application and all the costs that the applicant may incur in executing the eviction order.”

10 I agree entirely with the above decision. Turning to the instant case, there are numerous decisions where both the applicant and the respondents were contesting over the ownership of the suit property and the respondents lost squarely. I therefore find that there is no other means by which the applicant can enjoy the fruits of those judgments given by courts of competent jurisdiction. Consequently, I find merit in the Notice of Motion dated 29/8/2019 and the same is hereby allowed as follows;-

- 1). An order of forcible eviction be and is hereby issued against the plaintiffs/respondents by themselves, servants, agents or anyone claiming under them from the applicant’s L.R No. Mutira/Kathare/842 measuring 0.40 Hectares.
- 2). That the eviction exercise be carried out by a court bailiff of this honourable court and the O.C.S Baricho Police Station is ordered to provide security during the eviction exercise.
- 3). That the costs of this application and the eviction exercise to be borne by the plaintiffs/respondents herein.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 8TH JULY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

In the presence of;-

M/S Wandia holding brief for Kahigah for the Defendant

Plaintiff/Advocate - absent

Kabuta, Court Assistant – present.

