



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC APPEAL NO. 12 OF 2019**

**ADAN HASSAN.....1<sup>ST</sup> RESPONDENT**

**ABDI ADAN SORA.....2<sup>ND</sup> RESPONDENT**

**VERSUS**

**AHH (suing on his own behalf and**

**that of FA minor.....APPLICANT**

**RULING**

1. Before me is a notice of motion dated 12<sup>th</sup> October 2020 brought pursuant to Section 1A, 1B of the Civil Procedure Act and Order 51 rule 1 and 3 of the Civil Procedure Rules. The applicant who was the respondent in the appeal seeks the following orders;

1) Spent

2) That this Honorable Court do order the Respondent (appellants in the appeal), their heirs, assigns, agents and their family members to give vacant possession of ISIOLO RESIDENTIAL PLOT NOS. 76 and 79 located within Isiolo town and in default be forcibly evicted.

3) That the O.C.S Isiolo Police Station to provide security to ensure compliance.

4) That cost of this application be provided for.

2. The application is based on the grounds on the face of it and on the supporting affidavit dated 12<sup>th</sup> October 2020 of **Ali Hussein Hassan**, the applicant. He avers that he is the owner of ISIOLO RESIDENTIAL PLOT NOS. 76 and 79 located within Isiolo town, and that judgment was entered in his favor on 14/12/2018 in the magistrate's court. The respondents being aggrieved by the said decision filed an appeal in this court which dismissed the said appeal on 29/01/2020. It is on this basis that he makes the application as he will be prejudiced if the orders sought are not granted.

3. The application is opposed by the respondents vide a replying affidavit dated 26<sup>th</sup> October 2020 sworn by 1<sup>st</sup> respondent, averring that they have already preferred an appeal against this court's judgment delivered on 29/01/2020. That the applicant's application is premature and cannot issue. Further the orders issued by the court were negative orders as the court merely dismissed the appeal. The applicant cannot purport to enforce the judgment of the lower court in the High Court and he ought to have filed this application in the lower court. They have never been in occupation of the suit properties and if the orders being sought are issued the same would be tantamount to issuing orders in vain and an abuse of the court process. That the applicant will suffer no prejudice if orders sought are not granted.

4. I have carefully considered the application, the replying affidavit and the submissions by both parties. I find that there is already a judgment in favor of the applicant in terms of prayer no. (a) in the plaint. The orders sought herein are geared towards effectuating that judgment. However, the judgment being enforced is the one before the trial court. The appeal filed by the current respondent was dismissed and the original court file was duly transmitted back to the trial court. It follows that execution proceedings ought to be conducted before the trial court.

5. The end result is that the application dated 12.10.2020 is misplaced and the same is hereby struck out with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Gachuki for respondent

Ms. Gitonga for applicants

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**