



**Ogonda v Sewe (Environment & Land Case 577 of 2015)
[2022] KEELC 14609 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 577 OF 2015
E ASATI, J
NOVEMBER 3, 2022
FORMERLY HCCC NO 51 OF 2012**

BETWEEN

GEOFFREY MURABULA OGONDA PLAINTIFF

AND

OWINO SEWE DEFENDANT

RULING

1. This ruling is in respect of the plaintiff/applicant's notice of motion application dated 14th June 2022 brought under certificate of urgency pursuant to the provisions of section 3A *Civil Procedure Act* and order 22 rule 6 *Civil Procedure Rules*. The Application seeks for orders that:
 - a. The application be certified urgent and heard on priority basis
 - b. That the OCS Ukwala or Segla Police Station or the nearest police station do provide security and assistance during the eviction of the Respondent from land parcel No LR North Ugenya/ sega/350
 - c. That costs of the application be provided for
2. The grounds upon which the application is brought, as contained in the notice of motion and supporting affidavit sworn by Geoffrey Marabula Ogonda on 14th June 2022, are that a ruling was delivered on January 21, 2022 and an order made against the Defendant, his family, agents and other persons claiming on his behalf, to be forcefully evicted from land parcel No North Ugenya/ Segla/ 350 upon expiry of 30 days from the date of the ruling. That an eviction order dated March 10, 2022 was issued by the court and that the Defendant has refused to move out and surrender vacant possession of the land to the applicant and that the relief sought shall meet the ends of justice.



3. The application was unopposed. An affidavit of service sworn by the process server one Anthony Masingo on August 2, 2022 shows that the defendant was served with the application on July 30, 2022.
4. I have perused the entire court record herein. I have also keenly considered the contents of the notice of motion and the supporting affidavit. The court record shows that judgement was given in favour of the plaintiff/ applicant herein on 8/11/2017, *inter alia*, for the defendant to remove any of his houses or crops found to be on land parcel No North Ugenya/sega/350. That thereafter, a decree was extracted on 28th December 2017. The record further shows that subsequently, the defendant filed an application dated 22nd July 2020 seeking for review of the judgement and decree. The plaintiff also filed an application dated 30th November 2020 seeking for orders of eviction against the defendant/ Respondent and that the OCS Ukwala police station or the nearest police post to provide security during the eviction. The record shows that both applications were heard and vide its ruling delivered on January 21, 2022 the court dismissed the defendant's application for review and allowed the applicant's application in the following terms:

“Owino Sewe, the defendant, his family, agents or any other person claiming on his behalf be forcefully evicted from land parcel North Ugenya/sega/350 pursuant to the judgement/ decree herein upon the expiry of 30 days from the date of this order. The applicant to use court bailiffs or auctioneers in the eviction process. There be liberty to apply. Costs to the plaintiff.”
5. The application before me seeks, substantially, for orders that the police provide security during the eviction process. The court has already ordered that the applicant will use either court bailiffs or auctioneers to do the actual eviction. It is the applicant's case as contained in paragraphs 4 and 5 of the supporting affidavit that the eviction order is already issued and addressed to Eshikhoni Auctioneers and that numerous attempts previously made to remove the defendant from the suit land were met with a lot of resistance from the defendant and his agents/children, hence the need for security.
6. I have read and taken into account the applicant's written submission dated 12th October 2022.
7. The role of the police service in an eviction process has to be distinguished from that of the court bailiffs and auctioneers. I am in agreement with the words of YM Angima J when discussing the role of the police in the eviction process in *Mariko Ndwiga vs Edithe Muthanje* [2020]eKLR that:-

“...a distinction has to be drawn between their role as agents of eviction and their role as law enforcement officers. The court's understanding is that whereas the eviction order is to be executed by the appointed court bailiffs or auctioneers, the role of the police service shall be confined to maintaining law and order to enable the court bailiff to perform their duties. The OCS of Runyenjes police station is not expected to undertake the eviction himself. What the respondent prayed for is merely provision of security. This court is satisfied that the order for provision of security is merited.”
8. Similarly, in the present case all that the applicant seeks is provision of security by the police during the eviction process. The role of the police is thus limited to provision of security during the eviction.
9. The upshot is that the application is merited. The same is allowed as follows:
 - i. The OCS Ukwala or Segal Police Station or the nearest police station do provide security and escort to the court bailiff or auctioneer during the eviction of the respondent from land parcel No LR North Ugenya/sega/350.



ii. Costs of the application to the Applicant.

Orders accordingly

RULING DELIVERED, DATED AND SIGNED AT KISUMU VIRTUALLY THIS 3RD DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

E. ASATI

JUDGE

In the presence of:

Maureen: Court Assistant.

N/A for the Applicant/Plaintiff

N/A for the Respondent/Defendant

Obiero Advocate for an intended Interested Party.

E. ASATI

JUDGE

