



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 27 OF 2018**

**ABDULLAHI SHEIKH AHMED.....PLAINTIFF**

**VERSUS**

**MANDERA COUNTY GOVERNMENT.....DEFENDANT**

**RULING**

By a Notice of Motion dated 22<sup>nd</sup> June, 2021, the Plaintiff/Applicant sought the following orders;

- 1. THAT the court decree issued pursuant to the judgement delivered on 27<sup>th</sup> November, 2020 with regard to forceful eviction be enforced and executed by the Officer Commanding Police Division (OCPD) Mandera East Sub-County, Mandera County.***
- 2. THAT the costs of this application be provided.***

**GROUND UPON WHICH THE APPLICATION IS PREMISED**

- That on 27<sup>th</sup> November, 2020 judgement was delivered in favour of the Applicant.
- The Respondent was adjudged to vacate the Applicant's property L.R No. 13139/680 Grant I.R No. 5287 within six (6) months failing which, they be forcefully evicted from the property and/or in the alternative, the Respondent to pay a reasonable compensation of a sum of Kshs.7,000,000/= for the property.
- That to date, the Respondent has failed to vacate the property nor pay the amount in compensation.
- That the Applicant therefore seeks an order of the court to issue to the County Commissioner Mandera County to execute the said judgement by forcefully evicting the Respondent from the said property.
- It is therefore in the interest of justice that the Plaintiff/Applicant be granted leave to amend her plaint filed herein.

**APPLICANT'S SUMMARY OF FACTS**

In support of the said application, the Applicant filed an affidavit and deponed as follows;

- That I am a male adult of sound mind, the Plaintiff/Applicant herein, hence competent to swear this affidavit.
- That on 27<sup>th</sup> November, 2020 this Honourable Court delivered judgement in my favour as follows;
  - A declaration that the Plaintiff is the legal and registered owner of property of L.R. No. 13139/680 Grant I.R. No. 5287.
  - A declaration that the acquisition of the suit property L.R No. 13139/680 Grant I.R No. 5287 by the Defendant and any developments thereon was fraudulent, illegal and unlawful.
  - An order eviction do issue compelling Defendant, its officer, assigns, agents or institutions to vacate and surrender the suit property L.R. No. 13139/680 Grant I.R. No. 5287 to the Plaintiff failure to which, the Defendant, its officers, assigns, agents or institutions be forcefully evicted therefrom.
  - That in the alternative, the Defendant to pay the Plaintiff a reasonable compensation of a sum of Kshs.7,000,000/=

(seven million) being financial compensation from the current market value of the parcel of land known as L.R. No. 13139/680 Grant I.R. No. 5287.

(e) Interest of commercial rate from the date of filing suit till payment in full.

(f) Costs of the suit.

Annexed and marked “ASA-1” is a copy of the decree.

3. That to date, the Respondent has failed to vacate and tender vacate possession of the suit property or pay the compensation as decreed.

4. That it is only fair and just I be allowed to enjoy the fruits of my judgment.

5. That I therefore seek an order of the court to issue to the Officer Commanding Police Division (OCPD) Mandera East Sub-County, Mandera County to execute the judgement herein by evicting the Respondent, its officers, assigns, agents or institutions and particularly the Mandera Polytechnic from my property L.R. No. 13139/680 Grant I.R. No. 5287.

6. That I pray that this Application be allowed.

In response to the said application, the Defendant/Respondent filed a Notice of Preliminary objection raising the following three grounds;

1. THAT the application offends the provisions of Order of the Civil Procedure Rules 2010 on amendment of pleadings which does not allow amendment after judgement.

2. THAT the application offends the provisions of the Civil Procedure Act 2020 as it totally seeks to amend the judgement and decree of the court.

3. That the application does not merit to be granted the orders sought, and therefore urges the court to reject the application and dismiss it with costs.

When this matter came up for directions, the parties agreed by consent to dispose the said application dated 22<sup>nd</sup> June, 2021 by written submissions. By the time of writing this ruling, none of the parties and/or their counsels had filed their submissions.

#### **ANALYSIS AND DETERMINATION**

I have carefully considered the Notice of Motion application, the supporting affidavit and the response by the Respondent. The issue for determination in this application is fairly simple. The Applicant is seeking to enforce the judgement of the Honourable Court issued on 27<sup>th</sup> November, 2020. Despite a decree having been drawn indicating that the suit property L.R. No. 13139/680 belongs to the Applicant, the Respondent has failed to vacate the property nor pay the reasonable compensation of Kshs. Seven million (Ksh.7,000,000/=). The prayers sought by the Applicant are not to amend the judgement/decree but enforcement of the same. The Applicant at paragraph 2 (c) of the supporting affidavit is seeking interest at commercial rate from the date of filing till payment in full.

Those averments on oath have no corresponding order/prayer in the application. The notice of preliminary objection raised by the Respondent cannot sustain as the application is not seeking to amend the judgement of this court but enforcement of the same.

It must however be remembered that court orders are not made in vain but are meant to be complied with. Once a court order is made in a suit the same is valid unless set aside on review and/or appeal. A wealth of decisions by the Superior Courts have confirmed this position. In the case of **ECONET WIRELESS KENYA LTD VS MINISTER FOR INFORMATION & COMMUNICATION OF KENYA & ANOTHER (2005) I KLR 828**, Ibrahim, J (as he then was) stated;

*“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved condemners. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”*

I agree with the principles stated in the above decision. In this case there is no reason why the Respondent has not complied and/or satisfied the order of this court.

The upshot of my finding is that the notice of preliminary objection dated 29<sup>th</sup> June, 2021 is not upheld and the notice of motion dated 22<sup>nd</sup> June, 2021 is allowed as prayed. I make no orders as to costs.

**DATED, DELIVERED VIRTUALLY AND SIGNED AT GARISSA THIS 1ST DAY OCTOBER, 2021.**

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E.C. CHERONO (M.R)

ELC JUDGE

In the presence of:

- 1. MR. AYIEKO FOR APPLICANT**
- 2. RESPONDENT/ADVOCATE: ABSENT**
- 3. FARDOWSA: COURT ASSISTANT**