



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT GARISSA

ELC MISC. APPLICATION NO. 4 OF 2020

MOHAMED MUNIR CHAUDHIRI (Sued as the Administrator of the Estate of

SALIM OMAR BASABRA (Deceased).....1ST DEFENDANT/APPLICANT

SAIDA ALI AMBAR.....2ND DEFENDANT/APPLICANT

VERSUS

ABDALLA MOHAMED OMAR.....PLAINTIFF/RESPONDENT

RULING

By way of a Notice of Motion dated 10/12/2020 and brought under *Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 22 Rule 29 and Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 152 A, 152 B, 152 E, 152 F (2) and (d) and 152 G (i) of the Land Act Amendment Act, 2016 and Article 40(1) and (6) of the Constitution of Kenya* and all other enabling provision of the law, the Applicant sought the following orders;

(i) This application be heard ex-parte and service be dispensed with in the first instance.

(ii) This Honourable Court do confirm the notice and order ABDALLA MOHAMED OMAR the Respondent herein to vacate the suit land known as Plot No. GSA/24 (GARISSA TOWNSHIP BLOCK 1/17)

(iii) The Honourable Court do issue an eviction order authorizing the Court Bailiff, Garissa Law Courts to remove ABDALLA MOHAMED OMAR from occupation of the land known as Plot No. GSA/24 (GARISSA TOWNSHIP BLODK 1/17).

(iv) The Officer Commanding Division, Garissa Police Division to provide security and assistance to ensure compliance with the eviction order sought in prayer 3 above.

(v) The Honourable Court do order for compensation for the illegal occupation on the land known as Plot No. GSA/24 (GARISSA TOWNSHIP BLOCK 1/17).

(vi) Costs of this application be provided for.

The application is based on the following ten grounds;

1. The Respondent Mr. Abdalla Mohamed Omar instituted a suit against the Applicants and the judgment thereto was delivered on the 4th May, 2009, dismissing his suit with costs.
2. The decree emanating from the said judgment was issued on the 18th November, 2009 and served upon the Respondent on the 29th September, 2009.
3. That arising from the above, the Respondent has been in unlawful occupation of the Applicant's land known as Plot No. GSA/24 (GARISSA TOWNSHIP BLOCK 1/17) without express/lawful authority or without any right or licence under any contrary to the judgement of the Honourable Lady Justice Joyce Alouch JA of the 4th May, 2009.
4. The Respondent was served with a notice to vacate land on the 19th August, 2019 but has refused and/or neglected to voluntarily vacate the suit plot.

5. That as a result of the Respondents conduct, the Applicants are suffering damages and/or loss and have been deprived of the lawful right to possession and usage being the lawfully registered owner of land known as Plot No. GSA/20 (GARISSA TOWNSHIP BLOCK 1/17).
6. That the Defendant/Applicants have no other way of enforcing their right.
7. The Applicants are apprehensive of their security and that of the Court Bailiff as the said ABDALLA MOHAMED OMAR is a violent person hence the need for security reinforcement from the police officers while executing the said decree.
8. That the Applicants ought to be compensated for the illegal occupation of their land.
9. It is in the interest of justice and fairness that the Defendant/Applicants be granted the prayers sought.
10. No prejudice shall be suffered by the Plaintiffs/Respondents if the orders sought are granted.

PLAINTIFFS/APPLICANTS SUMMARY OF FACTS

The application is supported by an affidavit sworn by **Mohamed Munir Chaudhiri** one of the Applicants who deposed as follows;

- (1) THAT I am one of the Applicants herein and an Advocate of the High Court of Kenya practicing as such in the firm and style of Chaudhiri & Associates Advocates.
- (2) The Respondent, Mr. Abdalla Mohamed Omar instituted a suit on the 20th March, 1990 against the Applicants and the judgement thereto was delivered on the 4th May, 2009, dismissing his suit with costs annexed herewith and marked “**MMC 1**” is a copy of the judgment.
- (3) THAT the decree emanating from the said judgment was issued on the 18th November, 2009 and served upon the Respondent on the 29th September, 2009. Annexed herewith and marked “**MMC-2**” are copies of the decree and covering letter confirming the same.
- (4) THAT the Respondent herein who is currently in occupation of the land has defaulted to hand over the suit property as he has blatantly refused and/or neglected to vacate the said land known as Plot No. GSA/24 (GARISSA TOWNSHIP BLOCK 1/17)
- (5) THAT on the 19th August, 2019, my Advocates on record served the Respondent who is currently in occupation of the land with a notice to vacate land dated the 15th August, 2019 but to date MR. ABDALLA MOHMAED OMAR, his agents, servants and/or employees are still in occupation of the suit plot. Annexed herewith and marked “**MMC-3**” is a copy of notice to vacate land.
- (6) THAT the notice to vacate land was equally served upon the Deputy County Commissioner, Garissa Town Sub-County, Officer Commanding Police Station Division, Garissa Division and the Area Chief Garissa Township Sub-location, Garissa town who acknowledged receipt of the same as shown on the notice to vacate land annexed above.
- (7) THAT my Advocates court process server Mr. Milton Okello, has since filed an affidavit of service confirming the same. Annexed herewith and marked “**MMC-4**” is a copy of return of service confirming service on all the parties aforementioned.
- (8) THAT as a result of the conduct of MR. ABDALLA MOHAMED OMAR the estate of Salim Omar Basabra and the 2nd Applicant continues to suffer damages and/or loss and has been deprived of their right to a quiet and peaceful enjoyment of the suit property and/or its proceeds.
- (9) THAT we are apprehensive of our security and that of the Court Bailiffs as he Respondent is a violent person hence the need for security reinforcement from police officers while executing the eviction orders sought.
- (10) THAT it is only fair and just that the Respondent compensates the estate of Salim Omar Basabra and that of the 2nd Applicant for the illegal occupation on the property.
- (11) THAT evicting the Respondent and the Estate MR. ABDALLA MOHAMED OMAR is the only to discontinue the loss.
- (12) THAT in all the circumstances of this case, for the ends of justice in this case to be met the orders sought in the application annexed hereto and in support whereof I swear this affidavit ought to be granted.
- (13) THAT what is deponed hereinabove is true to the best of my knowledge belief and information.

RESPONDENTS SUMMARY OF FACTS

The Respondent, though served with the application did not file any response.

ANALYSIS AND DECISION

I have considered the notice of motion application dated 10th December, 2020 and the supporting affidavit of Mohamed Munir Chaudhiri who is the 1st Applicant. I have also considered the annexures to the supporting affidavit and the applicable law.

The gist of this application is a judgment and decree of the High Court of Kenya sitting in Nairobi being HCCC No. 1420 of 1990. The said suit involved the same parties and suit property. In a judgement delivered on 4th May, 2009, Lady Justice Joyce Alouch JA (as she then was) dismissed the suit which had been commenced by the Respondent herein with costs. On 18th day of November, 2009, a decree was issued which the Applicants are now seeking the orders in the present application to have the same enforced. Copies of the said judgment and decree have been annexed to the supporting affidavit.

Article 159 of the Constitution of Kenya 2010, recognizes the judicial authority of courts and tribunals established under the Constitution. Courts and tribunals exercise this authority on behalf of the people. The decisions court make are made on behalf of the people and in that regard, they must be respected and obeyed. In addition, these decisions and orders must be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy. The judiciary acts only in accordance with the Constitution and the law and exercises its judicial authority through its judgements, decrees, orders and/or directions. For that reason, therefore, the authority of the courts and the dignity of their processes are maintained when those judgments, decrees, orders and directions are obeyed and respected.

In the case of *Nthabiseng Pheko vs Ekurhuleni Metropolitan Municipality & Another CCT 19/11 (75/2015)* Nkabinde, J observed as follows;

“The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts....”

In view of my analysis and findings enumerated herein above, the conclusion becomes irresistible that the Notice of Motion dated 10th December, 2020 is merited and the same is allowed as prayed with costs to the Applicant. It is so ordered.

READ, DELIVERED VIRTUALLY AND SIGNED IN GARISSA THIS 1ST DAY OF OCTOBER, 2021.

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E. C. CHERONO (MR.)

ELC JUDGE

IN THE PRESENCE OF;

1. SUMBA HOLDING BRIEF OF MRS. WASIKE FOR APPLICANT.

2. RESPONDENT/ADVOCATE: ABSENT

3. FARDOWSA: COURT ASSISTANT.