



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 107 OF 2016

BENARD KHAEMBA WEKESA.....PLAINTIFF/APPLICANT

VERSUS

EMMANUEL WASIKE.....DEFENDANT/RESPONDENT

R U L I N G

BENARD KHAEMBA WEKESA (the Applicant herein) has moved to this Court vide his Notice of Motion dated 10th November 2020 seeking the main order that the application dated 25th March 2019 by **EMMANUEL WASIKE** (the Respondent herein) be dismissed for want of prosecution. He also seeks costs.

The gravamen of the application is that by a Decree issued by this Court on 10th January 2018, the Court ordered that the Respondent be evicted from the land parcel **NO WEST BUKUSU/NORTH MATEKA/2053**. A further order was issued by the Deputy Registrar directing the Officer Commanding Police Station **BUMULA** to provide security to the Court Brokers in executing the eviction order. However, when the Applicant went to the Police Station to seek their assistance, he was informed that the Respondent had applied for an order of stay and so the request for Police Assistance was declined. That has prompted the Applicant to move to this Court.

The application is supported by the Applicant's affidavit also dated 10th November 2020 to which are annexed the following documents: -

- 1. The Decree issued on 10th January 2018.**
- 2. The order dated 16th January 2019.**
- 3. The Respondent's application dated 25th March 2019 and filed under Certificate of urgency.**

Though served with the Applicant's application on 15th October 2021 notifying him that the same was coming up for hearing on 28th October 2021, the Respondent did not file any response nor attend Court on the hearing date. The application is therefore not opposed.

I have considered the application, the supporting affidavit and the annexures thereto.

It is clear that the Applicant first moved to this Court vide a plaint dated 15th September 2016 seeking the main remedy that the Respondent be evicted from the land parcel **NO WEST BUKUSU/NORTH MATEKA/2053**. The Respondent did not file any defence and having heard the Applicant, **MUKUNYA J** delivered a Judgment on 10th January 2018 granting the Applicant the orders sought in his plaint. A Decree was thereafter issued on 10th January 2018. No appeal appears to have been filed against that Judgment.

It would appear from the un – contested averments herein that due to the Respondent's hostility, the Applicant was not able to have the Respondent evicted from the said land. This necessitated the filing of an application by the Applicant seeking Police assistance to evict the Respondent. By an order issued on 16th January 2019, the Deputy Registrar **HON E. N. MWENDA** directed the Officer Commanding **BUMULA POLICE STATION** to provide security to the Court Brokers in the eviction process.

Meanwhile, by a Notice of Motion dated 24th March 2019 and filed under Certificate of urgency, the Respondent moved to this Court seeking a stay of execution of this Court's Judgment delivered on 10th January 2018 and also leave to file his defence. That application was first listed for hearing on 8th October 2019 but to – date, it has not been heard. The Respondent did not appear in Court to explain why an application filed under Certificate of Urgency over two (2) years ago remains un – prosecuted. Most importantly, the Respondent having

been served with the Applicant's Notice dated 10th November 2020 neither filed any response nor attended Court for hearing.

I have considered the Notice of Motion dated 10th November 2020 un – opposed as it is. It common ground that the Applicant has a Judgment in his favour issued on 10th January 2018 over three (3) years ago. The same has neither been appealed nor reviewed. There is no reason why the Applicant should continue being kept out of the fruits of his Judgment any longer. The Respondent cannot continue riding on an application which he filed under Certificate of Urgency on 25th march 2019 and which remains unprosecuted.

Ultimately therefore, the Applicant's Notice of Motion dated 10th November 2020 is allowed in the following terms: -

- 1. The Respondent's Notice of Motion dated 25th March 2019 is hereby dismissed.**
- 2. The Officer Commanding Bumula Police Station is directed to abide by this Court's orders issued on 16th January 2019.**
- 3. The Applicant's costs of both applications shall be borne by the Respondent.**

Boaz N. Olao.

J U D G E

2nd November 2021.

Ruling dated, signed and delivered in Open Court this 2nd day of November 2021 at **BUNGOMA**.

Applicant present

Respondent – absent

Joy – Court Assistant – present

Boaz N. Olao.

J U D G E

2nd November 2021.