



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 206 OF 2012**

**ALEX KIHONGE MUKOMA.....APPELLANT**

**VERSUS**

**JOSEPH NGUGI MBURU.....1<sup>ST</sup> RESPONDENT**

**CHARLES KIRUNDI MAGU .....2<sup>ND</sup> RESPONDENT**

**PETER MUNGAI KAGOIYA.....3<sup>RD</sup> RESPONDENT**

**RULING**

***( Application for eviction; there being judgment in favour of the applicant; application allowed).***

1. The application before me is that dated 4 April 2019 filed by the appellant. The applicant wishes to have an order of eviction against the respondents from the land parcels Nyandarua/Kangui Township/136 and 137. They also wish to have the OCS Ol Joro Orok Police Station provide security during execution of the eviction orders and for the costs to be shouldered by the respondents.

2. This has been a long drawn case that was commenced at the Chief Magistrate's Court in Nyahururu in the year 2001. In the plaint, the plaintiff contended to own the Plots. Nos. 136 and 137 in Kangui Township, Nyandarua District. He averred that in the year 1996, the respondents trespassed into his said plots and illegally constructed structures. The respondents in their defence contended to be owners of various plots identified as K23 and K24 for the 1<sup>st</sup> respondent; K19 and K20 for the 2<sup>nd</sup> respondent; and K 17 for the 3<sup>rd</sup> respondent which were said to have no relationship with the Plots Nos. 136 and 137 claimed by the plaintiff. The appellant's suit in the Magistrate's Court was dismissed which provoked this appeal. In the course of hearing the appeal, the appellant adduced evidence that the Plots Nos. 136 and 137 Kangui Township, were now registered as Nyandarua/Kangui Township/136 and 137. After hearing the appeal, I found for the appellant and in my judgment delivered on 3 May 2018, I found that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' plots K 17 – K20 had encroached into the applicant's Plot No. 136 and 137 by about 8 meters or so. I gave the 2<sup>nd</sup> and 3<sup>rd</sup> respondents 30 days to remove their structures and give vacant possession.

3. In this application, the applicant complains that despite the judgment, the respondents have declined to vacate the suit properties and that they have refused to move even after being notified to do so.

4. Despite being served, the respondents did not file anything to respond to the motion. The claims of the applicant are therefore not challenged and I have no reason to doubt the assertion of the applicant that the respondents have refused to move out of the Plots Nos. 136 and 137 of Kangui Township which belong to the applicant.

5. So that the applicant may enjoy the benefits of his judgment, I do issue orders of eviction against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to move out of the land parcels Nyandarua/Kangui Township/ 136 and 137. I further direct the applicant to appoint an auctioneer or court broker to execute the order of eviction. I order the OCS Ol Joro Orok, to provide the requisite security needed for the exercise to be successful.

6. The costs of this application and the costs of eviction will be shouldered by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

7. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru 10<sup>TH</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

Mr. Nanda present for applicant.

No appearance on part of M/s D.K. Kaburu & Co. for respondents.

Court Assistants: Nelima Janepher/Patrick Kemboi

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**