



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.464 OF 2017**

**AUGUSTIN KIPKOECH CHERUIYOT....1<sup>ST</sup> APPLICANT**

**PAUL KIPKEMOI ARAP TUE .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**HARON OCHANDA KABURI .....RESPONDENT**

**RULING**

***(Application for eviction; respondent having made a claim for adverse possession over the suit land which was dismissed; respondent's continued possession of the suit land therefore not tenable; orders of eviction issued).***

1. The application before me is that dated 14 May 2018 filed by the defendant vide which he has sought orders of eviction to be issued against the 1<sup>st</sup> plaintiff over 10 acres that he is claimed to occupy in the land parcel Nakuru/Kapsita/1068. The applicant has also sought that the order of eviction be enforced by the OCS, Elburgon Police Station.
2. The case itself was commenced by way of an Originating Summons through which the plaintiffs claimed to be entitled to the land parcel Nakuru/Kapsita/1068 by way of adverse possession. The 1<sup>st</sup> plaintiff (the respondent in this application) claimed to be entitled to 10 acres of this land, whereas the 2<sup>nd</sup> plaintiff claimed to be entitled to 5 acres of the land. Their suit was heard and dismissed on 10 December 2014.
3. In this motion, the applicant has averred that despite the judgment, the respondent has refused to vacate the suit land thus making this application necessary.
4. The respondent did not file anything to oppose the motion. On my part, I see no reason why I should not allow it. The respondent's case over the suit property failed and the respondent has no right to be on the suit land. It has already been held in a full judgment that the respondent has no claim over the suit land. The prayer by the applicant for an order of eviction is therefore justified.
5. I allow this application and issue eviction orders against the 1<sup>st</sup> plaintiff, Augustine Kipkoech Cheruiyot. I direct the applicant to appoint a court broker/auctioneer to execute the warrants of eviction. I further order the OCS, Elburgon, to provide security to the court broker/auctioneer, during the eviction exercise. The respondent will bear the costs of this application and any costs of eviction.
6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 3<sup>rd</sup> day of October 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Ogeto for the applicant.

No Appearance for the respondent.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**