



**Catholic Diocese of Eldoret v Kimutai & another (Environment & Land Case E014 of 2024) [2025] KEELC 3975 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3975 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E014 OF 2024  
GMA ONGONDO, J  
MAY 20, 2025**

**BETWEEN**

**CATHOLIC DIOCESE OF ELDORET ..... PLAINTIFF**

**AND**

**BETHWEL KIMUTAI ..... 1<sup>ST</sup> DEFENDANT**

**PHYLLIS KIMUTAI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the application by way of a notice of motion dated 31<sup>st</sup> December 2024 under, inter alia, sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya and Order 22 Rule 22 of the Civil Procedure Rules 2010, the defendants/applicants through Oduor Munyua And Gerald Attorneys at Law LLP Advocates, sought the orders which include;
  - a. Exparte in the interim the respondent be compelled to re-open the premises and return to the applicants all illegally attached property belonging to the applicants' students/learners while carrying out execution on 31.12,2024 pending the hearing and the determination of the application dated 29.10.2024.
  - b. Exparte in the interim there be temporary stay of execution of the decree/judgment of this honourable court delivered on 24.10.2024 and all consequential orders arising therefrom pending the hearing and determination of the application dated 29.10.2024.
2. The application is opposed by a replying affidavit fourteen paragraphs sworn on 8<sup>th</sup> January 2025 by Rev. John Arap Lelei, the Auxiliary of the respondent who averred in part that;
  - a. Upon delivery of judgment on 24.10.2024, the Plaintiff was entitled to the exclusive possession and use of the suit property as a matter of right under the law. Therefore, the repainting of



the premises including the entrance gate, was a lawful act within the plaintiff's rights as the registered owner and was aimed as exercising its proprietor rights over the property.

- b. The eviction orders issued by the court were clear, final, and unconditional requiring the Defendants to vacate the suit property within thirty (30) days from the date of judgment. There was no directive from the court suspending or limiting the enforceability of the decree based on judicial recess or vacation period. Consequently, the Defendants assertion that execution cannot be levied during the court's recess is legally unfounded and misconceived.
  - c. Pursuant to Article 40 of *the Constitution* of Kenya 2010, the Plaintiff has the right to protection of property, which includes the right to exclusive possession control and use of the suit property. Upon the delivery of judgment in favor of the Plaintiff and in the absence of any stay of execution or appellate intervention, the enforcement of the court's decree, including the eviction of the Defendants, does other constitutional rights. The eviction was a lawful execution of the court's final determination and does not violate the constitutional guarantee against arbitrary deprivation of property under Article 40(3) since the process followed the legal procedure and judicial oversight.
3. Mr Oscar Oduor learned counsel for the defendants/applicants has sought to withdraw the Notice of Motion application dated 31<sup>st</sup> December 2024 without costs. He stated that the application has been overtaken by events since the defendants have been evicted from the suit property, LR NO. Nandi/Kamobo/2181.
  4. Ms Kesei learned counsel for the plaintiff/respondent has no opposition to the prayer to withdraw the application.
  5. Thus, it is common ground that the application be withdrawn.
  6. It is trite law that the choice by a party to withdraw a matter before court having given reasons thereof as a general rule, cannot be taken away from that party; see Council of Governors-vs-Senate & another; SC Reference No. 1 of 2014 (2014) eKLR.
  7. Clearly, learned counsel for the applicants/defendants explained that the defendants have been evicted from the suit property. That therefore, the application has been overtaken by events herein.
  8. In the premises, the applicants' withdrawal of the application is meritorious.
  9. Wherefore, I hereby allow the withdrawal of the application dated 29<sup>th</sup> October 2024 with costs in the cause.
  10. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 20<sup>TH</sup> DAY OF MAY 2025.**

**G M A ONGONDO**

**JUDGE**

**PRESENT**

Mr Oscar Oduor learned counsel for the defendants/applicants

Ms Kesei learned counsel for the plaintiff/respondent

Mr Walter Kipkorir, court assistant

