



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC NO. 517 OF 2017

(Formerly NAIROBI ELC No. 1143 OF 2015)

LENGARE OLE NGAPE.....PLAINTIFF

VERSUS

MPAA OLE DAMO.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Notice of Motion application dated 19th February, 2021 brought pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act; Order 22 Rule 29 and Order 51 Rule 1 of the Civil Procedure Rules. The Plaintiff seeks the following orders:

1. Spent
2. That this Honourable Court do issue an eviction order directed to the 1st Defendant, his servants, agents and/ or any other persons whatsoever in occupation of the property known as TITLE NO. LOITOKTOK/ENDONET/ 401.
3. That the Officer Commanding Station (OCS) of Loitoktok Police Station or the officer in charge of the nearest Police Station do oversee the enforcement of the eviction order.
4. That the 1st Defendant be ordered to pay the costs of the eviction exercise that may be incurred by the Plaintiff/ Decreeholder.

The application is premised on the grounds on the face of it and the supporting affidavit of LENGARE OLE NGAPE where he explains that judgement was delivered on 27th May, 2019 directing the 1st Defendant to give vacant possession of title number LOITOKTOK/ ENDONET/ 401 hereinafter referred to as the 'suit land' and his advocates proceeded to extract a Decree which was issued on 24th June, 2019. He contends that the 1st Defendant has refused to give vacant possession to him unless forcefully evicted. Further, that he has exhausted all amicable means including involving local administrative authorities such as the Chief but the 1st Defendant has been adamant in granting vacant possession. He claims the 1st Defendant intends to illegally lease parts of the suit land for farming to third parties in contravention of the judgement herein. He seeks eviction orders as the 1st Defendant has not filed any substantive Appeal apart from filing the Notice of Appeal on 7th June, 2019. Further, there are no orders of stay against the judgement since its delivery. He reiterates that eviction orders should issue and the Officer Commanding Station (OCS) of Loitoktok Police Station or the officer of the nearest Police Station to supervise it.

The 1st Defendant opposed the Application and filed Grounds of Opposition where he stated that the Court is functus Officio having delivered its judgement on 27th May, 2019 and the Plaintiff is seeking Orders of this Court which it has already pronounced itself on the issue in dispute. Further, that if the Court entertains the Plaintiff's Application, it will result in re-opening of a matter before this Court which has already rendered the final decision. He reiterates that the Court lacks jurisdiction to hear this matter having rendered its final verdict . Further, that the 1st Defendant is desirous of filing an appeal against the said judgment and is waiting to receive a typed and certified proceedings to do so. He insists the Application lacks merit, is bad in law , and an abuse of the Court process and is founded on wrong principles.

None of the parties filed their submissions to canvass this application.

Analysis and Determination

Upon consideration of the Notice of Motion Application dated the 19th February, 2021 including the supporting affidavit as well as Grounds of Opposition dated 9th April, 2021, the only issue for determination is whether an eviction order should issue against the 1st Defendant in respect to land parcel number LOITOKTOK/ ENDONET/ 401.

It is not in dispute that this Court already pronounced itself in a judgement in favour of the Plaintiff. I will proceed to reproduce hereunder the final orders of the impugned judgement:

- a. A Declaration be and is hereby entered that the Plaintiff LENGARE OLE NGAPE is the absolute proprietor of TITLE NUMBER LOITOKTOK/ENDONET/ 401.***
- b. The District Land Registrar Kajiado be and is hereby ordered to forthwith cancel the title deed issued to the 1st Defendant MPAA OLE DAMO on 27th January, 2015 in respect of TITLE NUMBER LOITOKTOK/ENDONET/ 401.***
- c. The District Land Registrar, Kajiado be and is hereby directed to rectify the Land Register forthwith in respect of TITLE NUMBER LOITOKTOK/ENDONET/ 401 and issue the Title Deed to the Plaintiff LENGARE OLE NGAPE.***
- d. The 1st Defendant be and is hereby directed to give vacant possession of TITLE NUMBER LOITOKTOK/ENDONET/ 401 to the Plaintiff.***
- c. An Order of permanent injunction be and is hereby issued restraining the Defendants by themselves, servants and/or agents from entering upon, selling or otherwise disposing or in any other way dealing in the suit property without the express consent or authority of the Plaintiff.***
- d. Costs of the suit is awarded to the Plaintiff to be borne by the 1st Defendant.***

I note since the Judgement was delivered on 27th May, 2019 and a Decree extracted on 24th June, 2019, the 1st Defendant has not given the Plaintiff vacant possession of the suit land. The 1st Defendant claims the orders sought for eviction cannot be granted since the court is functus officio. Order 22 Rule 29 (1) of the Civil Procedure Rules provides that: ‘ **Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.** ‘

In **Menginya Salim Murgani v Kenya Revenue Authority [2014] eKLR** the Supreme Court of Kenya held that: “**It is a general principle of law that a Court after passing Judgment, becomes functus officio and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.**”

In this instance there exists a Decree against the 1st Defendant to offer vacant possession of the suit land to the Plaintiff which he has declined to adhere to. He claims he intends to lodge an Appeal against the said Judgement and Decree which he is yet to do. To my mind I find that the only remedy that is available to the Plaintiff is to seek eviction orders in accordance with Order 22 Rule 29 (1) of the Civil Procedures Rules cited above. I hence disagree with the 1st Defendant that this court is functus officio to grant the orders sought by the Plaintiff as this application only sought to give effect to the impugned judgement which final orders I have cited above and not to make any further determination of an issue in dispute.

It is against the foregoing that I find the application dated 19th February, 2021 merited and allow it. I will proceed to make the following final orders:

1. An eviction order be and is hereby issued directed to the 1st Defendant, his servants, agents and/ or any other persons whatsoever in occupation of the property known as TITLE NO. LOITOKTOK/ENDONET/ 401.
2. The Officer Commanding Station (OCS) of Loitoktok Police Station or the officer in charge of the nearest Police Station do oversee the enforcement of the said eviction order.
3. That the 1st Defendant be and is hereby ordered to pay the costs of the eviction exercise that may be incurred by the Plaintiff.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF JUNE, 2021.

CHRISTINE OCHIENG

JUDGE