



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 70 OF 2008

ANTHONY NDUNDA MWANIKI.....PLAINTIFF

VERSUS

WAVINYA BERNARD NZOMO.....DEFENDANT

RULING

1. The Notice of Motion Application dated 30th July, 2020 was filed pursuant to the provisions of Section 152E of the Land Act and Order 51, Rule 1 of the Civil Procedure Rules by the Plaintiff seeking for the following orders:

- a. That the Defendant/Respondent herein be evicted from the land parcel number Mbiuni/Kabaa/1055 and deliver vacant possession to the Applicant herein;**
- b. That the OCS Mwala Police Station do provide security during the eviction process;**
- c. That the cost of this Application be borne by the Defendant/Respondent.**

2. The Application was supported by the Affidavit of the Plaintiff sworn on 30th July, 2020 who deponed that he filed this suit through a Plaintiff dated 3rd May, 2008 and amended on 28th February, 2018 in which he pleaded that he is the registered owner of all that parcel of land known as Mbiuni/Kabaa/1055 (*hereinafter the suit property*).

3. The Plaintiff deponed that after a vigorous trial process, this Honourable Court delivered its Judgment on 4th October, 2019 allowing the prayers sought in the Plaintiff; that a Decree was subsequently issued on 19th December, 2019 and that this court issued a permanent injunction restraining the Defendant whether by herself, servants or agents or otherwise however from erecting structures, remaining or continuing in occupation of the suit property; the Defendant to give vacant possession of the suit property; and the Defendant to pay the costs of the suit.

4. The Plaintiff deponed that the Defendant herein has refused to offer him vacant possession of the suit property despite the express Judgment of this court directing him to do so and that prior to levying eviction on the Defendant, the Defendant was issued with a notice of the intended eviction pursuant to Section 152(E) of the Land Act No. 6 of 2012.

5. The Plaintiff deponed that the Defendant was issued with a notice of the intended eviction on 5th February, 2020; that the notice was also served on the Deputy County Commissioner and the Officer Commanding Station as required who are in charge of the area where the land is situated and that the three (3) months period issued to the Defendant herein by virtue of the notice has since lapsed. The Plaintiff deponed that court orders and Judgments are not issued in vain and that it is therefore necessary for the court to allow this Application for eviction.

6. The Application was opposed vide a Replying Affidavit dated 31st May, 2021 sworn by the Defendant who deponed that she was not given an opportunity to ventilate her Defence because the Applicant proceeded *ex-parte* notwithstanding the fact that he knew that she harboured and demonstrated interest in respect of the suit land.

7. The Defendant deponed that giving, issuing, granting and/or permitting vacant possession without her being heard would be grossly prejudicial to her since she had inhabited the suit land for more than 20 years, a fact which was well known to the Plaintiff and that if evicted, she will suffer irreparable loss which could not be compensated by costs.

8. The Defendant deponed that she had not been served by the Plaintiff or anybody whatsoever with a Notice of the intended eviction under the provisions of Section 152(E) of the Land Act No. 6 of 2012; that the mere existence of a Notice of intention to evict did not itself demonstrate service thereof and that no evidence had been exhibited to demonstrate that the alleged Notice of intention to evict her was ever

served upon the Deputy County Commissioner or the office of the Officer Commanding Station. The Application was canvassed by way of written submissions which I have considered.

9. The record shows that on 4th October, 2019, this court delivered its Judgment in this matter. In the Judgment, the court directed the Defendant to give vacant possession of land known as Mbiuni/Kabaa/ 1055 (*the suit property*). The Defendant has never filed any Application for setting aside the proceedings, Judgment and Decree of this court.

10. It is not clear to this court why the Plaintiff served the Defendant with a notice under Section 152E of the Land Act. My understanding of the provisions of Sections 152A to 152I of the Land Act is that the same are only applicable where a party seeks to evict people from land without a court order.

11. Indeed, under Section 152F, any person who is aggrieved with a notice issued under Sections 152A to 152E of the Land Act may apply to court for relief against the notice. However, where the order for eviction is given by the court by way of a Judgment or Ruling, the said order should be executed forthwith without giving the notices contemplated under Section 152A to 152E of the Land Act.

12. That being the case, the issue of whether the Defendant was served with the notices contemplated under Section 152E of the Land Act does not arise. To the extent that this court has already decreed that the Defendant should give the Plaintiff vacant possession, the Defendant should be evicted from the land without much ado.

13. For those reasons, I allow the Plaintiff's Application dated 30th July, 2020 as follows:

a. The Defendant/Respondent herein be evicted from land parcel number Mbiuni/Kabaa/1055 and deliver vacant possession to the Plaintiff/Applicant herein.

b. The OCS Mwala Police Station do provide security during the eviction process.

c. The cost of this Application be borne by the Defendant/Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 30TH DAY OF JULY, 2021

O.A. ANGOTE

JUDGE