

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 458 OF 2007

1. NJUGUNA NGUNJIRI

2. AGNES MUMBI NGUNJIRI.....PLAINTIFFS

VERSUS

JOYCE NYAKERU KARANJA.....DEFENDANT

RULING

On 24th October, 2002, judgment was entered in this matter in favour of the plaintiffs against the defendant in which the court declared the defendant a trespasser on all those parcels of land known as RUIRU/TOWNSHIP/513 and RUIRU/TOWNSHIP/514(hereinafter referred to as “the suit properties”) and ordered the defendant to vacate the same within 3 months from the date of the judgment in default of which she be evicted. The defendant did not vacate the suit properties within the period that was prescribed by the court. On 12th January, 2004, the plaintiffs applied for execution against the defendant. A notice to show cause was issued and served upon the defendant to appear in court and show cause why she should not be evicted from the suit properties. The defendant did not show cause and on 26th February, 2014, the court ordered that the defendant be evicted from the suit property.

On 3rd March, 2004, the court issued an eviction warrant to Francis Muchiri Gikanga of Expeditious General Merchants & Court Bailiffs authorizing him to evict the defendant from the suit properties. The said court bailiffs did not execute the eviction warrant. On 2nd November, 2004, another warrant was issued to Joseph Ndirangu Nderitu of Jogan Dries Services Auctioneers & Court Bailiffs. The second Court Bailiff also appears not to have executed the said eviction warrants.

What is now before the court is an application by the plaintiffs seeking an order that the firm of Mwaniki Mwarima & Company Advocates be granted leave to come on record for the plaintiffs in place of Kihara Muttu & Co. Advocates that was previously acting for the plaintiffs in the matter. The plaintiffs have also sought an order that eviction warrant be re-issued to Vintage Auctioneers & Court Bailiffs authorizing them to evict the defendant and any other person bound by the decree of this court who has refused to vacate the suit properties and to put the plaintiffs in possession of the same. The plaintiffs have sought a further order that the OCS Ruiru Police Station do provide security during the eviction exercise. The application was brought on the ground that the plaintiffs’ previous advocate and the auctioneer who was instructed to evict the defendant from the suit property died before the eviction was carried out.

While preparing this ruling, I have noted that the application was served upon the firm of Mbiyu Kamau & Co. Advocates. From the record, the firm of advocates on record for the defendant is S.Ndege & Company Advocates. The said firm of advocates was granted leave to come on record for the defendant on 4th March, 2003. They filed a Notice of Change of Advocates on 6th March, 2003. This means that the firm of Mbiyu Kamau & Co. Advocates ceased to act for the defendant. The service that was effected against the said firm was therefore improper and ineffective.

Due to the foregoing, I am unable to proceed further with consideration of the plaintiff’s application due to lack of proper service. In exercise of this court’s inherent power, I hereby set aside the proceedings and the order made on 6th October, 2021 and direct that the plaintiffs’ Notice of Motion application dated 10th December, 2020 be served a fresh upon the advocates who are on record for the defendant.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021.

S. OKONG’O

JUDGE

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERRING PLATFORM IN THE PRESENCE OF:**

MS. MWIHAKI H/B FOR MR. MWANIKI FOR THE PLAINTIFF

MR. OMONDI H/B FOR MR. KURIA FOR THE DEFENDANT

MS. C.NYOKABI-COURT ASSISTANT