



REPUBLIC OF KENYA



KENYA LAW
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Mwasi v Asikoye (Civil Case 189 of 1988) [2023] KEHC 18618 (KLR) (12 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU**

CIVIL CASE 189 OF 1988

RE ABURILI, J

JUNE 12, 2023

BETWEEN

ALBERT OBIAYO MWASI PLAINTIFF

AND

OKORE ASIKOYE DEFENDANT

RULING

1. The court record herein shows that an eviction order was issued on August 4, 2016 by Majanja J, against the Plaintiff Albert Obiayo Mwasi who was given 30 days of the said date to vacate the property LR No West Bunyore/Itumbu/194.
2. The Plaintiff sought leave to appeal which was granted. In addition, the Plaintiff was granted 30 days stay in default, the Defendant was to evict the Plaintiff from the suit land. The OCS Luanda Police station was to supervise the eviction.
3. Following the above orders, the Plaintiff filed a Notice of Appeal on August 12, 2016 and served the same on the Defendant on August 12, 2016 (sic).
4. The Notice of Appeal is dated August 12, 2016 and could only have been served after being filed in court, yet there is no evidence that it was filed within 7 days of the date of the order of eviction which was under challenge, having been issued on August 4, 2016.
5. The Notice of Appeal was thus filed out of 7 days' period. In addition, there is an application under certificate of urgency dated August 31, 2016 seeking for stay of the eviction order which application has not been prosecuted nearly seven (7) years to date.
6. As there is no stay of execution of the eviction order made by this court, this court finds no reason why the eviction order has not been executed against the Plaintiff herein Albert Obiayo Mwasi. However, as one year is over since the eviction order was issued, I hereby issue Notice to Show Cause to be served



upon the Plaintiff to attend court to show cause why he cannot be evicted from the suit land LR No West Bunyore/Itumbu/194.

7. Nonetheless, as the suit property is situate within Vihiga County where both parties reside and the Defendant is very old and blind, only being assisted by his son Samson Okoko, I hereby direct that this file be forthwith transferred to Vihiga High Court for the execution of the Eviction order first, by way of Notice to show cause being issued against the Plaintiff.
8. This ruling shall be typed and the entire file photocopied and kept in a skeleton file while the original file shall be transmitted to Vihiga High Court together with the Notice to Show Cause to be served and prosecuted before the said court on July 4, 2023.
9. Accordingly, from Kisumu High Court, this file is closed upon its transfer to Vihiga High Court.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF JUNE, 2023

R. E. ABURILI

JUDGE

