

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

E.L.C CASE NO. 77 OF 2016

PACIFICA KEMUNTO NYAMONGO.....1ST PLAINTIFF

ESTHER BOCHABERI NYAMONGO.....2ND PLAINTIFF

VERSUS

AGNES MORAA KENYOSI.....DEFENDANT

RULING

1. What is before me is the Notice of Motion dated 7th October 2019 seeking orders that the Defendant be forcefully evicted from Land Parcel Number EKERUBO SETTLEMENT SCHEME/328 NORTH MUGIRANGO/MOKOMONI/51. The application is anchored on grounds that the court delivered its ruling on 28.6.2019 whereby the Defendant was ordered to vacate Land Parcel Number NORTH MUGIRANGO/MOKOMONI/51 and relocate to Land Parcel Number EKERUBO SETTLEMENT SCHEME/328 within 60 days, failing which the Plaintiffs would be entitled to an order of eviction upon application. Despite being served with the judgment of the court the Defendant has failed to give vacant possession and continues to occupy the said parcel of land thus denying the Plaintiffs the use thereof.

2. The application is supported by the affidavit of Esther Bochaberi Nyamongo sworn on the 29th October 2019. In the said affidavit she deposes that the defendant was served with a copy of the order issued on 28.6.2019. She has annexed a copy of the Affidavit of Service to her affidavit as annexure EBN-1. She further deposes that the Defendant is not likely to vacate the suit land unless she is forcefully evicted.

3. The Defendant has resisted the application through her Replying affidavit sworn on the 15th day of January 2020. She deposes that the court ordered that she moves from land parcel number NORTH MUGIRANGO/MOKOMONI/51 to land parcel number EKERUBO SETTLEMENT SCHEME/328 but land parcel number EKERUBO SETTLEMENT SCHEME/328 is registered in the name of someone else and she fears that if she moves to the said parcel of land she will be evicted. She deposes that she has lived on the suit property ever since she got married in 1975 and that is where her husband was buried and therefore that is the only place she knows as her home.

4. The only issue for determination is whether an eviction order should be issued against the Defendant.

5. It is not in dispute that the court in its ruling dated 28.6.2019 declared the Plaintiffs who are the trustees of the beneficiaries of the estate of Nyamongo Onkware Marasi as the lawful owners of land parcel number NORTH MUGIRANGO/MOKOMONI/51 and ordered the Defendant to vacate the said parcel of land and move to land parcel number EKERUBO SETTLEMENT SCHEME/328 within 60 days. The said ruling adopted the arbitration award by the Assistant County Commissioner who had arbitrated the dispute between the plaintiffs and the defendant following an order of referral by the court. In its ruling the court noted that the elders observed that the Defendant was not a lawful wife of the deceased and was therefore not welcome to live in the home of the Plaintiffs. The Court further noted that Plaintiffs had found an alternative parcel of land for the defendant but she has declined to move to the said parcel of land. The Defendant has not appealed against the said ruling.

6. After the Defendant was served with the application herein, she filed an application for stay of execution dated 13th December 2019 which was subsequently withdrawn on the 17.12.2019. There is therefore nothing to stop the Plaintiffs from implementing the order of this court dated 28.6.2019. In the circumstances, I find merit in the application and I grant it in the following terms:

a. An order is hereby issued that the Defendant/Respondent be forcefully evicted from Land Parcel Number NORTH MUGIRANGO/MOKOMONI/51 forthwith.

b. The OCS EKERENYO POLICE STATION shall ensure compliance with this order.

c. The costs of this application shall be borne by the Defendant/Respondent.

Dated, signed and delivered at Kisii this 28th day of February 2020

J.M ONYANGO

JUDGE