



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 438 OF 2017

ISAAC MURIGI MUIRURI

(suing as the administrator of the

Estate of MUIRURI NJIRI, deceased).....PLAINTIFF/RESPONDENT

VERSUS

FRANCIS KARUME.....1ST DEFENDANT/RESPONDENT

ANDREW NGANGA.....2ND DEFENDANT/RESPONDENT

STANLEY MUTURI GATHERI.....3RD DEFENDANT/APPLICANT

RULING

1. Briefly, the application seeks orders that the Court bailiff be granted orders to execute the orders/decrees of this Court as per the judgement delivered on the 25/7/19 to evict the Plaintiff from LOC1/THUITA/160 (suit land). Further that the OCS of the police station in the area be ordered to provide security during the eviction.

2. The application is based on the grounds annexed to the affidavit which are; the 3rd Defendant was adjudged as the owner of the suit land in the judgement delivered on the 25/7/19 and the Plaintiff was given 90 days to vacate the suit land, which 90 days have elapsed and the Plaintiff is still on the suit land. That consequently the Applicant continues to suffer loss and damage.

3. The application is supported by the affidavit of the Applicant reiterated the grounds as stated above and added that the Plaintiff has not obtained any orders of stay of execution and therefore there is nothing to bar him from executing the said judgment.

4. The application is opposed by the 3rd Defendant vide his Replying affidavit dated the 25/11/18 and filed on the 28/11/19. In it the deponent states that he has filed an Appeal against the judgement delivered on the 25/7/19 and that the current application is unmerited and premature in the circumstances. He has annexed the Memorandum of Appeal.

5. The parties filed written submissions which I have read and considered.

6. From the record this Court delivered its decision on the 25/7/19 as follows;

“ That the Plaintiff by himself or other persons claiming under him are ordered to vacate the suit land within 90 days and in default, eviction to ensure.

That each party to bear its costs of the suit.”

7. The application by the Applicant is for enforcement of the orders of the Court aforesaid. There is evidence that the judgement was delivered in the presence of the Counsels for the parties and there is no record whether the Plaintiff sought for stay of execution. The provisions of Order 22 Rule 29 of the Civil Procedure Rules provide for execution of a decree of immovable property and delivery of possession.

8. The Court is of the view that it is within its mandate to make further orders to serve the limited purposes of enforcing its judgment.

9. It is trite law that an Appeal does not operate as a stay of judgment. In the present case there are no orders of stay of execution of the

judgment and the Court has no lawful reason to stop execution as decreed by the Court.

10. In the upshot the application is allowed with no orders as to costs.

11. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 27TH DAY OF FEBRUARY 2020.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Gacheru HB Maina Kagura for the Plaintiff/Respondent

1st & 2nd Defendants/Respondents – Absent

Wangari HB Gachau for the 3rd Defendant/Applicant

Irene and Njeri, Court Assistants