

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 138 OF 2013

ISAAK MUTIMBA MACHIO.....PLAINTIFF/RESPONDENT

VERSUS

CORNELIUS WABWIRE ZAKARIA.....DEFENDANT/APPLICANT

RULING

The application is dated 18th October 2019 and is brought under Section 1A, 3 and 3A of Civil Procedure Act Order 22, Rule 20 of the Civil Procedure Rules 2010 seeking the following orders:-

1. That this application be certified as urgent in the first instance.
2. That the defendant/respondent be evicted forthwith from land parcel No. North/Wanga/Matungu/1764.
3. That the O.C.S. Matungu police station to effect the order forthwith.
4. That the costs of this application be in the cause.

It is supported by affidavit of Cornelius Wabwire Zakaria the defendant/applicant and on the grounds that the decree was issued against the plaintiff/respondent on 28th day of February, 2019. That the plaintiff/respondent ought to have vacated land parcel number No. North/Wanga/Matungu/1764 within 6 months and the plaintiff/respondent has since failed to vacate the said parcel. That the acts of the plaintiff/respondent of occupying the said parcel of land is not only irregular but unlawful. That it is in the interest of justice that the orders sought be granted.

The plaintiff/respondent herein opposed the defendant's application dated 18th October, 2019, on the following grounds that equity invites the court to look at the plaintiff in the predicament he is faced based on the judgment delivered in favour of the defendant on 28th February, 2019. That there is excess land and the defendant can get his 3 acres without causing injustice by evicting the plaintiff from his homestead who has no alternative or place of abode to move to upon demolition and eviction orders taking effect within the same land which is 10 acres. That the demolition and eviction will render the plaintiff destitute yet this can be avoided by the defendant for amicably to have the two titles adjusted accordingly to allow the plaintiff maintain his homestead. That the defendant will still have his share without causing the plaintiff irreparable loss and damage by evicting the plaintiff touching on land parcel No. North/Wanga/Matungu/1763 and 1764 which can be rectified by consent of the parties.

This court has carefully considered the application and the submissions therein. This court entered judgment in favour of the defendant against the plaintiff on the 28th February 2019. The present application is for the enforcement of that judgment. The plaintiff's grounds of opposition are an appeal on the same. I find that court orders must be enforced in the absence of any stay. This application is merited and I grant the same with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF APRIL 2020

N.A. MATHEKA

JUDGE