



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC 18 OF 2017**

**VIOLET INGADO KIMANANI.....PLAINTIFF**

**VERSUS**

**FRANCIS KIVATI KADASIRA.....DEFENDANT**

**RULING**

Violet Ingado Kimanani the Decree Holder, applicant has come to court against Francis Kivati Kadasira praying for orders that **this Honourable Court be pleased to issue an eviction order for the forceful ejection of the Judgment Debtor/Respondent, his servants, employees, relatives, agents and/or anybody claiming through him from the suit land parcel no. Tiriki/Tigoi/1286 and the wall erected along the fence of the suit land be demolished. The costs of the demolition of the wall to be borne by the Judgment Debtor/Respondent and that the OCS Gambogi Police Station be ordered to enforce compliance of the orders of the Honourable Court and maintain peace upon eviction.**

The application is based on grounds that this court made orders that the Land Registrar and Surveyor Vihiga to visit Land parcel number Tiriki/Tigoi/1286 and confirm its ground boundaries and point them out to parties and that the defendant to vacate at the portion of the suit land that he was in possession. The land Registrar and Land Surveyor Vihiga visited the suit property and executed the order issued by the court.

The Respondent opposes the application on grounds that the respondent was never notified of the visit of the suit land properties by Vihiga County Lands Surveyor and registrar. Accordingly he was not present when the alleged survey was conducted and therefore did not aid in pointing out the alleged boundaries or portions of the land as brought out in the report dated 8/10/2019.

I have considered the application and the reply and do find that it is trite law that before a person is condemned he has to be heard. The right to be heard is candid and cannot be wished away.

The County Land Registrar and County Land Surveyor were to visit the property in the presence of the parties but did so in the absence of the defendant/respondent in disregard of the court order and therefore did not afford him the right to be heard. I do find the application without basis and the same is dismissed with costs.

The County Land Registrar and Surveyor Vihiga to comply with court order made on 30/5/2018 within the next 30 days and thereafter the Judgment to be implemented in terms of relief (b) within 30 days of the surveyor's report. Orders accordingly.

**DATED AND DELIVERED THIS 30 DAY OF APRIL, 2020.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**This ruling is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice on 15<sup>TH</sup> March 2019 and with the consent of the parties.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**