



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MURANG'A**

**E.L.C NO 172 OF 2017**

**DOUGLAS KARIUKI.....PLAINTIFF**

**VERSUS**

**FRANCIS IREGI MWANGLI.....DEFENDANT**

**RULING**

1. This ruling is in respect to the Notice of Motion filed on the 23/1/2020 seeking the following orders ;

- a. In furtherance of the Judgment issued herein that eviction orders do issue against the Defendant in all the suit lands namely Block 2/762 and Block 2/748.
- b. That the Honourable Court be pleased to issue an order that the officer commanding Murang'a police station provide security during the eviction process.
- c. Such further order as the Honourable Court may deem fit to grant.
- d. That costs be in the cause.

2. The application is premised on the following grounds;

- a. The Court decreed on 17/05/2018 that the Plaintiff is the rightful owner of the property and the Defendant was ordered to vacate the suit property within the next 60days.
- b. That despite having been served with this Court's order in person, the Defendant has failed, ignored and refused to vacate the suit lands.
- c. The Plaintiff is unable to use / develop his property and is being denied the fruits of this judgment.
- d. The Applicant has no other way of enforcing the said order unless the Defendant is forcefully evicted
- e. That the judgment should be reviewed to include that the Officer Commanding Murang'a Police Station will provide security and maintain order during the eviction.

3. The application is also supported by the affidavit of Douglas Kariuki the Applicant, herein, who largely reiterates the grounds on the face of the application and avers that when he visited the Murang'a Police Station he was advised that the police should be authorized by an order of this Court to provide security and maintain order during the eviction process.

4. There is evidence on record that the decree was served upon the Respondent on the 6/11/19 who accepted service but declined to sign the counterpart.

5. Despite service there is no response from the Respondent or his Advocate to the application hence the application is on the face of it is unopposed.

6. It is to be noted that the Applicant's application earlier filed in this Court seeking similar orders was dismissed for non-compliance with procedural requirements of service of the decree to upon the Defendant in fulfillment of Order 22 Rule 6. I note that the same has now been

complied with. Guided by Art 159 (d) and Section 1A of the Civil Procedure Act that mandates this Court to do justice to the parties before it, I feel that the substantive justice of this application will be met if this application is heard on its merits and to its conclusion notwithstanding the procedural gaps that led to the earlier dismissal. In any event the matter was not heard on its merits.

7. The judgment that the Applicant seeks to execute was delivered by this Court on the 17/5/2017 in which it was the finding of the Court that;

“ The suit property belongs to the Plaintiff and thus the Defendant is in occupation of it was without permission of the Plaintiff ..... the Defendant is ordered to vacate the suit property within 60 days of the date of the judgment and in default eviction orders to issue as per the provisions of the law”.

8. The Applicant has premised his application on the ground that the Respondent, despite being served with the Courts order in person, has failed ignored and refused to vacate as ordered by the Court. A decree was extracted therefrom and issued on the 12/6/18.

9. In the absence of any opposition to the application, it is the position of the Court that this is part of execution of the decree in favour of the Applicant who has in possession a valid judgement which should not be frustrated by the Respondent's lack of cooperation.

10. It is to be noted that payer No a) was granted by the Court and what remains are prayers b and c which are accordingly allowed.

11. I make no orders as to costs.

12. **It is so ordered.**

**DATED, SIGNED AND DELIVERED VIA EMAIL THIS 14<sup>TH</sup> DAY OF MAY 2020**

**J. G. KEMEI**

**JUDGE**