



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MIGORI

ELC CASE NUMBER 50 OF 2017

(Formerly Kisii ELC case No. 286 of 2016 (O.S))

JOHN NGON OLWERU.....PLAINTIFF/RESPONDENT

VERSUS

MARGARET OGUTU ANGIR.....1ST DEFENDANT/APPLICANT

WALTER OTIENO ANGIR.....2ND DEFENDANT/APPLICANT

RULING

1. The instant ruling is in respect of the two (2) applications hereunder:

- a) A Notice of Motion dated 6th January, 2020 filed on 6th January 2020 under Section 3A of the Civil Procedure Act (Cap 21) (The 1st application herein) and;
- b) A Notice of Motion dated 25th May 2020 filed on 26th May 2020 under the same provision of the law (The 2nd application herein).

2. The applicant, Walter Otieno Angir, who appears in person in the 1st and 2nd applications, is seeking same orders namely:

I. That this Honourable Court be pleased to order that the Officer Commanding Station, Oyugis Police Station to evict the plaintiff/respondent herein from Land Parcel No. Kabondo Kodhoch East/446 in execution of the decree/ruling of this Honourable Court, dated 27th November, 2019.

II. That costs of this application be in the cause.

3. The 1st and 2nd applications are premised on the applicant's supporting affidavit of even date as well as a copy of the judgment of this court rendered on 27th November 2019 marked as "WOA-1", a copy of map and official search marked as "WOA-2" and a copy of a letter from senior chief, Kawuor location marked as "WOA-3" annexed to the 2nd application. Furthermore, the 1st and 2nd applications are premised on two (2) grounds thus:-

- a) That the decree/ruling of this Honourable Court dated 27th November 2019.
- b) That it is necessary that an eviction order be based in accordance to the decree/ruling dated 27th November 2019.

4. Briefly, the applicant contends that following the said judgment of this court, it is necessary that the orders sought in the 1st and 2nd applications be granted. That on 1st January 2020, the area chief with clan elders held a meeting to find a solution in the matter and resolved that the respondent vacate the suit land, LR No. Kabondo/Kodhoch East/446 within ninety (90) days from that date. That the defendant failed to do so thus, precipitating the 1st and 2nd applications.

5. The respondent was duly served with the 1st and 2nd applications as disclosed in affidavit of service sworn on 30th January 2020 and filed on 1st February 2020 and hearing notices dated 13th February 2020 and 27th May 2020 duly received by his counsel. However, the respondent failed to either respond to the 1st and 2nd applications or attend court for hearing of the same. To that extent, he was accorded his rights under Articles 25(c), 48 and 50(1) of the Constitution of Kenya, 2010.

6. I have thoroughly considered the 1st and 2nd applications in their entirety. So, is the applicant entitled to the orders sought therein?
7. The applicant is seeking eviction of the respondent from the suit land based on the judgment of this court delivered on 27th November 2019. The suit land is registered in the name of the applicant and the 1st defendant herein as revealed at paragraph 19 of the judgment.
8. In paragraph 35 of the judgment, the court found that the respondent was not entitled to the reliefs sought in the originating summons dated 20th September 2016. Thus, the plaintiff's suit was dismissed with costs to the applicant and 1st defendant.
9. Paragraph 34 of the said judgment reads:

“By the way, the defendant is at liberty to move the court for an order of eviction of the plaintiff from the 0.1 acres (meant 1.0 hectares) of the suit land.”

10. On that score, the respondent is not entitled to the suit land which lawfully belongs to the applicant and 1st defendant. Section 152 of the Land Act, 2016 (2012) prohibits unlawful occupation of private, community or public land.
11. Section 13(7) (a) of the Environment and Land Court Act, 2015(2011) provides remedies including permanent preservation orders. Indeed, the same is inclusive of eviction sought in the instant matter.
12. More fundamentally, **Article 40(1) of the Constitution of Kenya, 2010**, stipulates the right to property. The applicant and the 1st defendant as proprietors, of the suit land are entitled to the land as well as the orders sought herein.
13. To that end, it is the finding of this court that the 1st and 2nd applications are unchallenged, cogent and steadfast. The applications are merited in the circumstances.
14. A fortiori, the 1st and 2nd applications dated 6th January 2020 and 25th May 2020 respectively are allowed in terms of:-

(a) Eviction order. The respondent/plaintiff to vacate the suit land LR NO. KABONDO/KODHOCH EAST/446 measuring one decimal zero hectares (1.0 Ha) in area within the next sixty (60) days from this date in default the Officer Commanding Station (OCS) Oyugis police station to evict respondent/plaintiff therefrom.

(b) Costs of the 1st and 2nd application be in the cause.

Delivered, Signed and Dated at Migori in open Court pursuant to, inter alia, Articles 7 (3) (b), 159 (2) (b) and (d) of the Constitution of Kenya, 2010, Section 3A of Civil Procedure Act chapter 21 Laws of Kenya and Sections 3 and 19 of the Environment and Land Court Act, 2015 (2011) due to the Corona Virus pandemic challenge, this 7TH day of OCTOBER, 2020.

G.M.A ONGONDO

JUDGE

In presence of :-

2nd Defendant/Applicant – Present

No appearance for the Plaintiff

No appearance for 1st Defendant