

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 298 OF 2015

MICHAEL OTIENO.....PLAINTIFF/APPLICANT

VERSUS

THOMAS ONDIMO DINDI.....DEFENDANT/RESPONDENT

RULING

The application is brought pursuant to Section 3 & 3A of the Civil Procedure Act and order 51 Rule 1 Civil Procedure Rules, 2010 seeking the following orders:-

1. That this application be certified urgent and be heard ex-parte in the first instance.
2. That this honourable court be pleased to grant orders empowering the OCS Mumias Police Station to provide security during eviction of the defendant/respondent herein, his family members and/or agents from Land Parcel No. S. Wanga/Bukaya/1012 and during demolition of any buildings and/or structures erected thereon.
3. That an order of eviction do issue in accordance with the decree issued herein to have the respondents immediately forcefully evicted.
4. That this order be served upon the OCS Mumias Police Station for compliance.
5. That the costs of this application be provided for.

It is premised on the grounds that on 26th June, 2019 judgment was entered in favour of the plaintiff/applicant which judgment ordered that the defendant/respondent herein and/or his family members and/or his agents vacate the suit land and demolish any buildings and/or structures erected thereon within six (6) months from the date of the said judgment. That six (6) month's period elapsed in January, 2020 but the defendant/respondent and his family have not complied with the orders of the court. That the plaintiff/applicant has extracted the decree and is ready to have it executed. That plaintiff/applicant cannot enforce the orders of this honourable court without the OCS Mumias Police Station providing security hence this application. That plaintiff/applicant has severally required the defendant/respondent to voluntarily vacate but the defendant and his family have remained adamant that they will not do so. That it is in the interest of justice for this application to be allowed.

The respondent submitted that the plaintiff/applicant is not entitled to the orders sought in the application. That the plaintiff/applicant did not serve him with the notice of entry of judgment as required by law. That he praying for more time to enable him move out of the land voluntarily. That he is praying for a period of four (4) months to enable him vacate the suit land.

This court has carefully considered the application and the submissions therein. Judgement was entered in this matter way back on 26th June, 2019 whereby the respondent were to vacate the suit land within six months from the date of the said judgement. There is no order of stay in this case and the respondent cannot disobey court orders by saying he was not aware of the judgement. On perusal of the court file I find that the respondent was present in person when the judgement was delivered. I find this application is merited and I grant the same with costs to the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 25TH NOVEMBER 2020.

N.A. MATHEKA

JUDGE