



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 78 OF 2017

PATRICK MALONGO LIDOVOLO.....PLAINTIFF/APPLICANT

VERSUS

LUICE ASANG'ASA(DECEASED)

ACTON MUSII KHALAMBUKHA

SABETI KHALAMBUKHA.....DEFENDANT/RESPONDENTS

RULING

The application is dated 12th November 2020 and is brought under Order 22 Rule 29 of the Civil Procedure Rules 2010 seeking the following orders that;

1. This honourable court be pleased to issue an eviction order for the forceful ejection of the 2nd and 3rd defendants, their relatives, servants, agents and or anybody claiming through them from the suit land parcel No. Tiriki/Shamakhokho/1442 forthwith and all or any structures erected thereon by the 2nd and 3rd defendants be demolished.
2. That the 2nd and 3rd defendants be and are hereby ordered to forthwith exhume the bodies of the 1st defendant Luke Asang'asa and Flora Ayega both deceased from the suit land parcel No. Tiriki/Shamakhokho/1442 and for them to bury the bodies elsewhere and in default the exhumation and preservation at the morgue or burial be carried out at their cost.
3. The O.C.S. – Serem police station be ordered to effect and enforce these orders.
4. Costs of this application be borne by the 2nd and 3rd defendants/respondents.

It is based on the affidavit of Patrick Malongo Lidovolo, the plaintiff/applicant and grounds that by the judgment/decree of this honourable court delivered on 24th June, 2020 the 2nd and 3rd defendants were granted 90 days to vacate the suit land parcel No. Tiriki/Shamakhokho/1442 or be evicted therefrom. The 2nd and 3rd defendants were also ordered to exhume the bodies of the 1st defendant and Flora Ayega both deceased from the suit land and bury them elsewhere and they were also restrained from trespassing or remaining on or using the suit land parcel No. Tiriki/Shamakhokho/1442. The 90 days given to the 2nd and 3rd defendants expired on 24th September, 2020 but they have in blatant disobedience of the decree and orders of the court refused to vacate but instead they have continued to arrogantly trespass on, occupy and use the suit land parcel No. Tiriki/Shamakhokho/1442 and neither have they also not exhumed the bodies of the two deceased aforementioned which is an eye-sore and degrading the suit land. It is imperative and necessary that the orders sought herein be granted in order to bring this litigation to an end and to enable the plaintiff/decree-holder enjoy the fruits of his success in litigation.

This court has considered the application and the submissions therein. It is a finding of fact that by the judgment/decree of this honourable court delivered on 24th June, 2020 the 2nd and 3rd defendants were granted 90 days to vacate the suit land parcel No. Tiriki/Shamakhokho/1442 or be evicted therefrom. The 2nd and 3rd defendants were also ordered to exhume the bodies of the 1st defendant and Flora Ayega both deceased from the suit land and bury them elsewhere and they were also restrained from trespassing or remaining on or using the suit land parcel No. Tiriki/Shamakhokho/1442. The 90 days given to the 2nd and 3rd defendants expired on 24th September, 2020 and the respondents have not fulfilled any of the above court orders. There is no stay of the court orders. Court orders must be obeyed. I find that the application is merited and I grant the following orders;

1. This honourable court be pleased to issue an eviction order for the forceful ejection of the 2nd and 3rd defendants, their relatives, servants, agents and or anybody claiming through them from the suit land parcel No. Tiriki/Shamakhokho/1442 forthwith.

2. That the 2nd and 3rd defendants be and are hereby ordered to forthwith exhume the bodies of the 1st defendant Luke Asang'asa and Flora Ayega both deceased from the suit land parcel No. Tiriki/Shamakhokho/1442 and for them to bury the bodies elsewhere and in default the exhumation and preservation at the morgue or burial be carried out at their cost.

3. The O.C.S. – Serem police station to effect and enforce these orders.

4. Costs of this application be borne by the 2nd and 3rd defendants/respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 15TH DECEMBER 2020.

N.A. MATHEKA

JUDGE