



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 92 OF 2017

KARIUKI MURUNJI.....APPLICANT

VERSUS

MAGDALENE WAIRIMU WANJOHI.....RESPONDENT

RULING

1. The Plaintiff /Applicant filed a Notice of Motion application dated 4/7/2020 seeking for execution orders and urged the following;

- a) An order be issued directing the Defendant forthwith to stop entering land parcel no. LOC.14/KAIRO/3118 and to stop harvesting the Applicant's tea thereon.
- b) An order be issued directing the Officer Commanding Kiriaini Police Station to forcibly evict the Defendant from land parcel no. LOC.14/KAIRO/3118 and prevent her from entering the same in future.
- c) An order be issued that the Defendant pay compensation to the Plaintiff for all the tea she has harvested from the said land in such amounts as the Court may assess or direct to be assessed and alternatively, the Plaintiff be at liberty to file a suit for such compensation.
- d) The costs of this application be paid by the Defendant to the Plaintiff.
- e) Such other or further orders be made as are just.

2. The application was premised on grounds that the Applicant has since executed the decree of this Court and is now the registered owner of land parcel number LOC.14/KAIRO/3118. That the Applicant had been in possession of the said land on which he had planted tea bushes since 1976 to the year 2016 when it was forcibly taken over by the Respondent who started picking the tea and selling it to Kiru Tea Factory. That the Applicant has attempted to get the Respondent to stop her unlawful acts with no success causing him pecuniary loss as shown from the records of the Kiru Tea Factory. The Applicant requests for assistance of the police in the eviction process to guard against any provocations with the Respondents. That the Respondent will not suffer undue prejudice and granting the application is consistent with the decree of this Court and in the interests of justice.

3. The Applicant swore an affidavit in support to this application in which he reiterates the grounds on the face of the application and expresses his frustration at attempting to stop the Respondent from continuing to illegally harvest tea from his land and the lack of good support from the local administration in this endeavor.

4. While arguing the application Counsel for the Applicant stated that the Applicant obtained a decree in his favour over his adverse possession claim as against the Respondent herein which decree he has since executed and had the suit land registered in his name. That the suit was lodged because of the Applicant's interference with the Plaintiff's possession of the suit land. He seeks prayers 1 and 2 and abandoned the others as would not be ventilated in this forum.

5. The Applicant did obtain a lawful decree from this Court which he has since executed and had the suit land registered in his name, he is the rightful owner of the said land and is thus entitled to possession, occupation and use of the said land in exclusion of any third parties. The Respondent's continued presence in the said land amounts to trespass, her acts are unlawful and in contempt of this Courts orders. The Applicant is entitled to enjoyment of the lawful earned judgment in his favour.

6. Following the decision of this Court the Defendant/ Respondent was obliged to abide by the same. Her continued stay on the suit land amounts to disobedience of this Courts orders. She has no legal right to continue remaining on the Applicant's land. The orders sought herein

are for execution of the said decree. The same are unopposed.

7. The provisions of Order 22 Rule 29 of the Civil Procedure Rules provide for execution of a decree of immovable property and delivery of possession thus;

Order 22, Rule 29. Provides;

(i) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

8. Section 34 of the Civil Procedure Act provides as follows;

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

9. This Court is therefore properly seized with powers to make further orders to serve the purposes of enforcing its own judgment. The Court cannot fold its hands as by doing so will cause hardship to the decree holder who should enjoy the fruits of his judgement. The judgment has not been appealed, set aside or vacated.

10. The application is hereby allowed as follows;

- a. The Defendant is ordered forthwith to stop entering land parcel No. LOC.14/KAIRO/3118 and to stop harvesting the Applicant's tea thereon.
- b. The Officer Commanding Kiriaini Police Station is ordered to forcibly evict the Defendant from land parcel no. LOC.14/KAIRO/3118 and prevent her from entering the same in future.
- c. No orders as to costs.

11. **It is so ordered.**

DATED, SIGNED AND DELIVERED AT MURANGA THIS 10TH DAY OF DECEMBER 2020

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Waiganjo for the Plaintiff

Defendant: Absent but served.

Court Assistants, Njeri & Kuyaki