



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU COUNTY

COURT NAME: NAKURU ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCC/E083/2021

JOSEPH CHEGE WANGAI & 3 OTHERS VS KAMANGA MUKONYORO & 3 OTHERS

RULING

Joseph Chege Wangai, Christopher Mureithi Macharia, Stephen Mbugua Kamau suing as official of Njoro Kiwanja Ndege Welfare Association have come to court seeking Orders that the Honorable Court be pleased to set aside its ex-parte orders of eviction against the Plaintiffs from the parcel of land known as PDP R23/2001(3 issued on 25th June, 2025 and re-open the Defendant's application dated 8th May, 2025 for hearing. Costs of this application be provided for. The applications is based on grounds that the Respondents herein filed an application dated 8th May 2025 seeking inter alia, that the Honorable Court issue orders for eviction of the Plaintiffs herein from all that parcel of land namely PDP R23/2001(3 and equally to order the O.C.S Njoro Police Station to provide police escort to auctioneers in carrying out the said exercise of eviction.

The Plaintiffs herein vide a Replying Affidavit sworn on 9th June 2025 vehemently opposed the said application on inter alia the fact that there is an application pending before the Court of Appeal for stay of execution in the matter herein, which application is queued for hearing, and as such the issue on execution would be sub judice.

The Defendant's application was slated for its first hearing on 25th June, 2025 before this Honorable Court for purposes of issuing further directions. The said date of 25th June, 2025 was however inadvertently not diarized by the Plaintiff's Counsel, which inadvertent mistake resulted to non-attendance by the said counsel on the said date. As a result of the said non-attendance, the Honorable Court only heard counsel for the Defendants and subsequently issued adverse orders suo moto, to wit, allowing the Defendant's application for orders of eviction after the lapse of ninety (90) days of the said orders. The said orders were issued in absence of the Plaintiff's counsel.

The Defendant's advocates did not serve the Plaintiffs and/or their advocates with the said directions until the Plaintiffs herein, to their surprise, woke up on the morning of 27th August, 2025 to notices of eviction posted near their residences. In any case, and in the absence of the Plaintiff's Counsel, the Court ought to have considered the Replying Affidavit filed by the Plaintiff and subsequently give directions on disposal thereof as opposed to issuing the ex-parte orders that it issued suo moto to the detriment of the Plaintiffs herein.



Lamentably, and by dint of the said orders, the Plaintiffs herein and their families are at the verge of being evicted from the suit land, which eviction would greatly prejudice them, their school going children as well as disrupt their daily lives. The non-attendance by the Plaintiffs' advocates was not deliberate, but a one-time excusable and inadvertent omission which ought not to be visited upon the Plaintiffs herein,

The said adverse orders were issued without hearing the Plaintiffs, and it is thus equitable and in the interests of justice that the Court sets aside the said orders issued on the 25th June 2025 and grant the Plaintiffs audience with regards to the issue of eviction at hand.

Besides the foregoing, the judgement herein was appealed before the Court of Appeal wherein an application for stay of execution is already pending for determination. As such, the adverse orders issued on 25th June, 2025 would not only render the Appeal nugatory but also visit untold hardships and injustice upon the Plaintiffs. No prejudice would be occasioned upon the Defendants if the application herein is allowed. On the contrary, the Plaintiffs stand to suffer irreparable harm and damage should the application herein be disallowed.

The respondent filed replying affidavit stating that the application is brought in bad faith, is mischievous and an abuse of the court process, devoid of merit and ought to be dismissed with cost as it is a design conjured to curtail the execution of the decree and order obtained on the merits.

That the orders issued by the honorable court on the 29 June, 2025 were not issued "suo moto" as perceived by the applicants but on the merit after considering the pleadings of both sides even in absence of the counsel for the Plaintiffs/Applicants.

The Plaintiffs' counsel failure to attend court and participate in the proceedings was unjustified since they were all aware of the existence of the same after service and in return responding to the 1st Defendants Application. Court orders issued after one party failed to attend court although aware of the hearing date cannot neither be referred to as orders issued "suo moto" nor "exParte" because the Counsel for the Defendants/ respondents appeared/ attended court and moved the court appropriately after the court noted that there was a quorum, a fact admitted by the Applicant. The applicants having failed to attend court, though aware of the hearing date, and defend the suit, the court exercised judicial leniency upon the plaintiffs and handed down a further 90 days-grace period during which they were to quietly surrender vacant possession to the plaintiffs in the Counter-claim.

The applicants have always been aware that the 90 days period initially handed down to them by the court suo moto in a judgment delivered on the 6th February, 2025 ran out on 6 May 2025 and therefore the 1st Defendants application dated the 8th May, 2025 was a matter of procedure to give effect to an eviction order issued on the February, 2025.

The court while allowing the prayers sought in the 1st Defendants application dated May 2025 graciously granted a further 90 days stay in addition to the initial 90 days allowed making it a total of 180 days grace period which was sufficient time for the Plaintiffs to abide by the court's direction. After learning that the additional 90 days window period is again on the verge of lapse, the Plaintiffs are initiating another attempt to frustrate the execution of the lawful orders of this court and enjoyment of the fruits of judgment by the 1st Defendant's. It is evident that this is a total abuse of the court's process as the Plaintiffs are not coming to court with clean hands. The Plaintiff's application herein has been further compromised by the Plaintiffs' very own members who have vacated the 1st Defendants' suit parcel contained in PI.)P R23/200T / 3 in compliance with the Court order herein to beat the additional 90 days period stipulated in the said Order.

I have considered the application and the replying affidavit and do find the Court of Appeal is seized



of this matter and has made an order of status quo to be maintained on the suit property pending the hearing and determination of the appeal. This court cannot act in vain. I do not make any order as this court is functus officio.

SIGNED BY/FOR:
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. NAKURU
ENVIRONMENT AND LAND COURT
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DATE: 2025-10-16 12:20:15