



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 252 OF 2017

JULIUS BARASA BURUDI

ISAAC JOAB BURUDI

JACKSON WAMBUNYA

MACHONI WAMBUNYA

JAMES WAMBUNYA.....PLAINTIFF/RESPONDENTS

VERSUS

JIMMY HABIL MKIMBO.....DEFENDANT/APPLICANT

RULING

The application is dated 6th December 2018 and is brought under section 3 and 3A of the Civil Procedure Act and order 51 of the Civil Procedure Rules seeking the following orders;

1. That the service of this application be dispensed with in the first instance.
2. That this honourable court be pleased to grant orders empowering the O.C.S., Kabras Police station to provide security during eviction of the plaintiffs/respondents herein and or their family members and or agents from Land Parcel No. South Kabras/Shamberere/367.
3. That an order of eviction do issue in accordance with the decree issued herein to have the respondents evicted forcefully forthwith.
4. That this order be served upon the OCS Kabras Police station for compliance.
5. That costs be provided for.

It is premised upon the affidavit of Jimmy Habil Mkombo filed herein on 24/10/2018 and upon the grounds that a ruling was delivered in favour of the defendant/applicant and to date there is no appeal or stay of execution. That the defendant/applicant herein is unable to execute the said ruling and or decree herein due to security reasons. That the decree has already been extracted and the time within which the plaintiffs/respondents were to move out of the suit premises has lapsed. That the plaintiffs/respondents are evasive, unfriendly and cannot cooperate. That the defendant/applicant cannot enforce the orders of this honourable court without the OCS providing security hence this application. That the 3 months grace period is now over. That the respondents are not keen on moving out voluntarily. That it is in furtherance of the cause of justice herein.

The respondents submitted that, the application is mis-conceived and bad in law. The applicant has a substitute decree in Case No. 252 of 2017 where eviction orders were issued. That sections 3 & 3A only apply where there are no specific provisions to deal with a particular matter. That this is civil dispute whereby execution is governed by order 22 of the civil procedure rules and the process have no place for policemen. Under order 22 rule 18 a notice to show cause must be issued before application for eviction so the application before this court is premature. That the application has no suit.

This court has considered the application and the submissions therein. The facts are that the applicant herein is unable to execute the said ruling and or decree herein due to security reasons. That the decree has already been extracted and the time within which the applicants/respondents were to move out of the suit premises has lapsed. The respondent in opposition merely state that this is the wrong procedure. I find that the grounds of opposition are frivolous. The applicant ought to enjoy the fruits of his judgement. This application has

merit and I grant the following orders;

1. That an order of eviction do issue in accordance with the decree issued herein to have the respondents evicted forcefully forthwith.
2. That this order be served upon the OCS Kabras Police station for compliance.
3. Costs to the applicant.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF FEBRUARY 2019.

N.A. MATHEKA

JUDGE