



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC APPEAL NO. 7 OF 2006

(FORMERLY ELDORET HCC NO. 41 OF 1988)

ERASTUS NDUNGU CHARAGU & ANOTHER.....APPLICANTS

VERSUS

ISAAC MWANGI MWAURA & 5 OTHERS.....RESPONDENTS

DIRECTIONS

1. This is a ruling on an application dated **17th September 2018** filed on the same date by the plaintiff. It seeks the following orders:-
 - (1)(spent)
 - (2) **The court be pleased to reissue an eviction order against the respondents from the applicant's land known as Sinyerere Kipsaina Block 3 /7145/2.**
 - (3) **The OCS Kachibora Police Station be directed to ensure that the orders of the court made herein are complied with.**
 - (4) **The respondents to surrender the cancelled titles to the office of the Land Registrar Trans Nzoia County.**
2. The grounds upon which the application is brought are as follows:-
 1. **The court issued an eviction order on 11/11/2004.**
 2. **The applicant has tried to evict the respondents from his land but in vain.**
 3. **An order of this court is required in order to evict the respondents.**
3. The notice of motion is supported by the sworn affidavit of Erastus Ndungu Charagu sworn on **17/9/2018**. It reiterates the grounds at the foot of the application. A report is attached to the application. It is made by the office of the deputy county commissioner Trans-Nzoia; it narrates reconciliation efforts exerted by that office.
4. Grounds of opposition were filed for the respondents on 2/10/2018. They term the application as lacking in merit, incompetent and an abuse of the court process; the respondents further indicate that the 1st 3rd 4th 5th and 6th respondents are deceased and that substitution is necessary before any orders are issued, which has not been effected. It is further stated that the 2nd respondent is senile (84 years old) and can not give instructions, and that an order of eviction can only be issued at a final and not an interlocutory stage. Finally, it is stated that the ruling of the court issued on 22/5/2007 determined the issue of eviction and should have been appealed against or reviewed.
5. A sworn affidavit dated 9/4/2018 of Gideon Barongo Advocate representing the respondents is in the record. He states in that affidavit that he has received information from the surviving relatives of some of the respondents that the 1st, 3rd, 4th, 5th and 6th respondents are deceased and he attaches the copies of their death certificates. According to that affidavit only the 2nd respondent has outlived all the others and he is old frail and sickly. A medical record is exhibited to show this. In view of the foregoing, it is deponed that there is no surviving respondent who can respond to the application, and substitution of all save the 2nd respondent is needed if proceedings are to continue.
6. I sympathize with the applicant's situation and in my view it would be fit and just if this matter was concluded at the earliest date possible

if only to get the parties out of the court corridors and pave the way for the handling of other matters that are still pending hearing.

7. However I agree with the counsel for the respondents; if the respondents are deceased then the matter can not continue as orders can not be targeted at deceased persons.

8. The applicant shall as soon as possible either identify the administrators of the estates of the deceased respondents or enjoin them so that the orders of this court may be targeted at specific persons representing the estates and all those estates encompass.

9. Alternatively if he finds that no letters of administration have been taken out in respect of those estates the applicant may file citations to enable this matter move.

10. For the above reasons, I find that the Chamber Summons dated **17/9/2018** is deferred till substitution has been undertaken in this suit.

Dated, signed and delivered at Kitale on this 4th day of February, 2019.

MWANGI NJOROGE

JUDGE

04/02/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Applicant (Erastus) in person

N/A for the respondent

COURT

Directions read in open court.

MWANGI NJOROGE

JUDGE

04/02/2019