



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC NO. E009 OF 2023 (OS)

JULIUS MACHUA MBUGUA - PLAINTIFF/RESPONDENT

VS

**SAMMY NGARI MBUGUA alias SAMMY
GEORGE NGARI - DEFENDANT/APPLICANT**

RULING

1. Vide this motion dated 3/1/25, the applicant moved this court seeking the following orders;
 - a. That the Plaintiff, along with his servants, relatives, agents, and any other persons residing in LR NO Dagoretti/Riruta/8825, 8826, and 8827 claiming occupation under the plaintiff, do vacate forthwith. If they fail to do so, all structures on LR No. Dagoretti/Riruta/8825, 8826, and 8827 shall be demolished accordingly.
 - b. That the OCS Riruta Police station do provide security during the eviction exercise and demolition of the structures.

- c. That the costs and expenses occasioned by and incidental to the eviction of the plaintiff from the suit properties be borne by the Plaintiff
2. The application is based on the grounds outlined in the face of the application and the supporting affidavit of the applicant, sworn on the same date. In it, the deponent states that; vide the OS dated 16/2/23, the plaintiff sought to be registered as owner of the suit land by adverse possession.
 3. That subsequently the parties agreed to refer the matter for mediation, whereby, upon involvement of all concerned, the parties codified their agreement in writing which they duly signed, leading to the adoption of the said mediation agreement as a decree of the court.
 4. That despite being served with the notice to vacate the suit lands, the Plaintiff's servants, agents, and tenants have refused and/or neglected to vacate the suit land. Their continued occupation prejudices the applicant, as he is unable to enjoy the benefits of the court's orders. The court was urged to order the eviction of the said Plaintiff, his children, servants, relatives, and other persons claiming under him, and in default, to order the demolition of his structures under the supervision of the police. That the OCS, Riruta Police Station, be directed to ensure law and order during the said eviction or demolition of all structures on the suit premises.

5. The Plaintiff opposes the application via his replying affidavit of Julius Machua, sworn on 5/3/25. He stated that he is in possession of and owns parcel No. 8828 and that he has not encroached upon plots Nos. 8825, 8826, and 8827 as alleged by the applicant, and that any such allegations are false. He asserted that the applicant failed to disclose that he has been sued in ELC No 040 of 2024 (OS) by a niece, namely Susan Gathoni Ngendo, and nephew George Mbugua Ngendo, who are claiming title by adverse possession of parcel No 8826 and who have obtained status quo orders on 16/7/24 of parcel 8826 hence are entitled to remain on the land pending the hearing and determination of the suit.
6. In addition, plots No 8827 and 8825 are occupied by the tenants who were put in possession by his late mother, Susan Gathoni Mbugua, and the applicant should follow the right procedure to evict them.
7. In his further affidavit, sworn by the applicant, dated 7/4/25, the applicant reiterated the contents of his earlier affidavit and added that the respondent /Plaintiff has admitted being in encroachment of the suit parcels. That one of the relatives indeed signed the mediation agreement and that the whole aim of filing the suit is to vex him . That the respondent has failed to cooperate in the execution of the consent order and sought an eviction of the respondent/plaintiff.
8. I have read and considered the written submissions filed in this suit

9. The key issue is whether the application is merited.
10. The gist of this application is that the applicant is seeking the eviction of the respondent /plaintiff from parcels No. 8825, 8826 and 8827. I have read and considered the judgment of this court issued on 14/11/24, and I find it necessary to repeat its contents as follows;
 - “1. The land dispute LR No 776 Dagoretti/Riruta belongs to Sammy Ngari Mbugua (the defendant)
 2. The Defendant shall cede ownership and sign all necessary transfer instruments for LR No Dagoratti/Riruta/8828 in favour of the Plaintiff upon completion of the succession of the estate of their late mother, Susan Mbugua.
 3. In consideration of 2 above, the plaintiff intends to cede ownership and his beneficial interest in his two plots/properties from the estate of Susan Gathoni Mbugua (deceased) as follows;
 - a. One-quarter (1/4) acre plot to be excised from LR No Dagoretti/Mutuini/1456 and LR No Kajiado/Kisaju/224 property
 4. This property’s agreement was entered in the presence of full and with full participation of all the siblings (brothers and sisters) of the plaintiff and the defendant.
 5. The parties shall commence the succession case for the estate of the late Susan Gathoni Mbugua (deceased) within the next 60 days of the date of this agreement.

6. Milimani ELC Cae No 009/2003 and Mim/Med/148/2024 be marked as settled with no orders as to costs”

11. From the above decree of the court, the parties were to complete the succession of the estate of their late mother, one Susan Gathoni Mbugua, before the agreed exchanges of the parcels. This clause applied to parcel 8828 which the applicant agreed to cede to the defendant.
12. The evidence from the above court decree shows that the applicant and the respondent agreed that parcel Dagoretti/Riruta/776 (mother title) belongs to the applicant/defendant.
13. From the record, it is also evident that the mother title was subdivided to yield parcels 8825-8828. The applicant, having agreed to cede parcel 8828 to the Plaintiff/respondent, retained the remaining parcels, 8825-8827.
14. The court is satisfied that due notice was issued to the respondent to vacate the suit land. The court having decreed that the parcels belonging to the applicant, I see no reason why the applicant should not enjoy peaceful possession of his properties.
15. **Final orders for disposal**

The application is therefore allowed as follows;

- a. That the Plaintiff, along with his servants, relatives, agents, and any other persons residing in LR NO Dagoretti/Riruta/8825, 8826, and 8827 claiming occupation under the plaintiff, do vacate within the next

90 days from the date of this Ruling. In default, eviction shall ensue as provided for in law and all structures on LR No. Dagoretti/Riruta/8825, 8826, and 8827 shall be demolished accordingly.

- b. That the OCS Riruta Police station do provide security during the eviction exercise and demolition of the structures.
- c. That the costs and expenses occasioned by and incidental to the eviction of the plaintiff from the suit properties be borne by the Plaintiff/Respondent.
- d. Costs of this application are in favour of the Applicant/Defendant.

16. Orders accordingly

DATED, SIGNED & DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 4th DAY OF NOVEMBER 2025.

J G KEMEI

JUDGE

Delivered Online in the presence of:

- 1. Ms Irungu HB for Mr Ngata Kamau for the Plaintiff/respondent

2. Mr Njogu HB for Mr Karanja for the Applicant/Defendant
3. CA - Ms. Yvette

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