

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 221 OF 2013

MARGARET MONYANI.....PLAINTIFF/RESPONDENT

VERSUS

AGNES. N. WANAMBISI.....DEFENDANT/APPLICANT

RULING

The application before court is dated 30.7.2018. the defendant seeks orders that the plaintiff's servants and agents be evicted from the suit parcel of land **Soy/Soy (Navillus)/1923**. That this court to order the Officer Commanding Station to ensure compliance with the orders and provide security.

The application is based on grounds that on 28th June 2018, this Honourable court delivered a Judgment and thereof issued a decree on 17th July, 2018 in favour of the defendant/applicant herein in respect to the Land parcel known as Soy/Soy (Navillus)/1923 measuring $\frac{1}{4}$ of an acre. The court via the decree issued ordered that the suit be dismissed. However, the above decree cannot be executed since the plaintiff/respondent, her agents, employees and/or servants are still illegally in occupation of the said parcel of land and thus obstructing access of the said land by the defendant/applicant herein. The defendant/applicant therefore seeks this Honourable Court to issue eviction orders against the plaintiff/respondent her agents, servants and/or employees so that she may take and enjoy quiet possession of the said parcel of land. The application herein has been made in good faith and in the interest of justice. The supporting affidavit reiterates the grounds of the application.

The respondent filed a replying affidavit stating that the orders sought amount to eviction orders which cannot be granted on application. The said orders can only be granted on substantive suit. There was no counterclaim by the defendant. There is no decree capable of execution.

I have considered the application dated 30.7.2018 and do find that the decree of the court given on 28.6.2018 and issued on 17th July, 2018 was a dismissal and therefore, the court cannot revisit the suit for further orders. This court became *functus officio* on delivery of the judgment. There is nothing to execute. The application is dismissed with costs.

Dated and delivered at Eldoret this 9th day of April, 2019.

A. OMBWAYO

JUDGE