

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KAKAMEGA**  
**ELC APPEAL CASE NO. 011 OF 2023**

**JACKTONE INDAKWA WAKHUSAMA.....APPELLANT**

**VERSUS**

**ELISEBA OBWAYI .....1<sup>ST</sup>**

**RESPONDENT**

**GRACE KAGUHA.....2<sup>ND</sup>**

**RESPONDENT**

**FRED ANYANGU OMUKANDA.....3<sup>RD</sup>**

**RESPONDENT**

**RULING**

**Introduction**

1. On 22<sup>nd</sup> May 2025, this court delivered judgment in this matter wherein it set aside the judgment of the trial court and substituted it with an order that the 1<sup>st</sup> respondent vacates parcel No. Marama/Lunza/3566 within 90 days and in default eviction order to issue. The court also ordered the Land Registrar Kakamega to lift the caution registered against the suit property aforesaid.

2. Subsequently, after the lapse of 90 days, the appellant filed notice of motion dated 3<sup>rd</sup> September 2025 seeking orders of eviction against the respondents from parcel No. Marama/Lunza/3566 and that the Officer Commanding Butere Police Station to provide security and supervise the eviction of the respondents from the suit property. Therefore, this ruling is in respect of the application dated 3<sup>rd</sup> September 2025. The application was predicated on the affidavit sworn by the applicant dated 3<sup>rd</sup> September 2025. The applicant argued that in the judgment delivered in this matter, the court ordered the 1<sup>st</sup> respondent to vacate the suit property in 90 days and in default eviction to issue. That the 1<sup>st</sup> respondent did not vacate after lapse of 90 days. That no appeal was preferred against the judgment.

3. The application was opposed. The 1<sup>st</sup> respondent filed replying affidavit sworn on 9<sup>th</sup> October 2025. She stated that she filed notice of appeal dated 22/06/2025 and that having applied for proceedings, she is yet to be supplied with the same. That her advocate has never been served with a decree and that in the absence of a decree there is

no formal legally recognized judgment. That the decree of the lower court was not extracted hence the appeal herein is superfluous and a nullity *ab initio*.

4. Parties filed written submissions in support of their arguments. On record are submissions filed by the applicant dated 26<sup>th</sup> September 2025 and the submissions filed by the respondents dated 9<sup>th</sup> October 2025; both of which the court has duly considered.
5. Having considered the application, response thereto and parties' rival submissions, the only issue that arise for the court's determination is whether the applicant deserves the orders sought.
6. In the judgment delivered herein on 22<sup>nd</sup> May 2025, the court ordered the 1<sup>st</sup> respondent to vacate the suit property in 90 days and in default eviction to issue. That judgment has not been stayed, reviewed, varied and or set aside. The 1<sup>st</sup> respondent has not denied the applicant's assertion that she has failed to vacate the suit property as ordered. Therefore, the application herein is intended to implement the judgment. The 1<sup>st</sup> respondent's

argument that the appeal herein is a nullity is misplaced as the appeal was already determined. This court has inherent powers under section 3A of the Civil Procedure Act to make orders for the ends of justice to be met. In this case, it is clear that the 1<sup>st</sup> respondent has not complied with the judgment. It is therefore imperative that she is evicted. In the premises I am satisfied that the applicant deserves the orders sought and the court hereby allows the application dated 3<sup>rd</sup> September 2025 in the following terms;

- a) An eviction order is hereby issued evicting the 1<sup>st</sup> respondent from land parcel No. Marama/Lunza/3566 as ordered in the decree.**
- b) The OCS Butere Police Station is hereby authorized to provide security and supervise the process of eviction of the 1<sup>st</sup> respondent from parcel No. Marama/Lunza/3566.**
- c) The appellant shall have the costs of the application herein.**

7. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN  
OPEN COURT/VIRTUALLY THROUGH MICROSOFT**

**TEAMS VIDEO CONFERENCING PLATFORM THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2025**

**A. NYUKURI**  
**JUDGE**

**In the presence of;**

The appellant in person

Mr. Odhiambo for the respondent

Court Assistant: Delphine