

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 91 OF 2016

MUKWANO DISTRIBUTORS LTD::::DECREE HOLDER/APPLICANT

VERSUS

SEURI

LEGUSI

SANOYE::::::::::JUDGMENT

DEBTOR/RESPONDENT

RULING

The Application is dated 8th September, 2025 and brought under Article 40 of the Constitution of Kenya 2010, Order 22 Rule 6 of the Civil Procedure Rules seeking the following orders;

1. THAT this application be certified urgent and that the same be heard ex parte in the first instance.
2. THAT Officer Commanding Station - Athi River Police Station to ensure enforcement of the Decree 29th November 2024;
3. THAT the cost of this application be provided for.

It is based on the following grounds that the matter herein was duly heard and determined and Judgment therein meritoriously entered on the 19th October 2022 in the following terms; The Decree Holder/Applicant proceeded and extracted a decree on 29th November 2024 whereafter it proceeded to serve the said decree on the Judgment Debtor/Respondent on the suit property both directly and through the Officer Commanding Station - Athi River Police

Station. That the Judgment/Debtor sought to stay the Judgment of this Honourable Court vide Civil Application No. E434 of 2022 but the same was dismissed vide the Ruling of 17th December 2023. That despite due service of the same and continuous demand to the Judgment Debtor/Respondent to vacate the suit property pursuant to the Judgment of this Honourable Court the Judgment Debtor/Respondent and his agents and or assigns have continued to unlawfully occupy and or encroach on the suit property in blatant disregard and contempt of this Honourable Court's orders. It is undeniable that the Decree Holder/Applicant has extended a tremendous amount of time and grace to the Judgment Debtor/Respondent to comply with the said Judgment and decree to no avail. That any attempt by the Decree Holder/Applicant and or its officers to access the property have been met with violent resistance by raucous youth employed by the Judgment Debtor/Respondent. This is a situation that has been numerous reported to the OCS Athi River Police Station. That the said OCS Athi River Police Station has categorically held that without an Order from the Court directing that his office to act, he is unable to take any further. That the Decree Holder/Applicant has no choice but to contract Auctioneers to conduct eviction of the Judgment Debtor his agents, servants, successors or assigns from the suit property owing to his refusal to vacate. That if this Honourable Court does not intervene and issue orders directing the OCS Athi River Police Station to assist and or facilitate the eviction of the Judgment

Debtor/Respondent, the Decree Holder/Applicant will continue to suffer unabated.

This court has considered the application and the supporting affidavit. The Respondent was served but failed to attend court or file any opposition. I have perused the court file and find that on the 19th October 2022 the court delivered a judgement and made the following orders;

- a) *THAT a declaration be and is hereby issued that the Defendant's actions amount to unconstitutionally dispossessing the Plaintiff of its right to property contrary to Article 40 of the Constitution.*
- b) *THAT the Defendant, his servants, successors or assigns be and are hereby directed to grant vacant possession of L.R. No. 26700/3 comprised of Grant No. I.R. 119946 within 90 days from the date hereof, failure to which an eviction order do issue.*
- c) *THAT after ninety (90) days, the Defendant whether by himself, his agents, servants, successors or assigns howsoever be or are hereby restrained from entering, encroaching, trespassing, working, constructing, fencing, alienating, building or transacting on all that parcel of land known as L.R. No. 26700/3 comprised of Grant No. I.R. 119946.*
- d) *THAT costs of the suit is awarded to the Plaintiff.*

The Defendants failed to attend court during the hearing of the matter despite having been served. The application is not opposed. Court orders cannot be

issued in vain. I find that the application is merited and I grant the following orders;

1. The Defendant his successors or assign are to vacate the suit land L.R. No. 26700/3 comprised of Grant No. I.R. No. 119946 within the next 60 days from the date of service of this order and in default eviction order to issue.
2. The OCS Athi River Police Station to supervise the implementation of these orders.
3. No orders as to costs as the application was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 17TH DAY OF DECEMBER 2025.

N.A. MATHEKA
JUDGE