

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMABAY**  
**ELCLC CASE NO. 1 OF 2023**

**REGISTERED TRUSTEES KISII**

**SPORTS**

**CLUB.....PLAINTIFF/RESPONDENT**

**VERSUS**

**THE REGISTERED TRUSTEES (EVANGELICAL  
LUTHERAN CHURCH OF  
KENYA).....RESPONDENT/APPLICANT**

**RULING**

**(On whether the plaintiff/respondent should vacate and/or**

**be evicted from Land Parcel Kisii Municipality /Block**

**II/132)**

**The Application**

**1.** The Applicant filed a Notice of Motion dated 29<sup>th</sup> June 2023 seeking orders:

- 1. That this honourable court be pleased to issue an order directing the plaintiff/respondent to give vacant possession and /or be evicted from the defendant's land parcel LR. No. KISII BLOCK II/32.**
- 2. THAT upon the grant of the prayers in (1) above the Honourable court be pleased to order the OCS Kisii**

**Police Station to provide security during the fencing off the decree holder's land.**

**3. That costs of this application be provided for.**

**2.** The application is premised on grounds that the Applicant obtained a judgment against the Plaintiff/Respondent on 16<sup>th</sup> February 2023. The Respondent was granted one hundred and twenty (120) days to give vacant possession of the suit property to the respondent/ applicant. That despite being ordered and being aware of the court's judgment and orders, the Respondent has ignored, refused and /or neglected to obey the court orders. The Applicant stated that the judgment and /or decrees of courts are not given in vain and that the same should be respected. On this basis, the Applicant prayed that the Respondent be compelled to vacate the suit premises.

**3.** The Applicant, through one of its trustees, Samson Maoto, swore an affidavit and deposed that it filed the instant case in the year 2008 and the judgment thereof was delivered on 16<sup>th</sup> February 2023. He reiterated that the Respondent was given 120 days to vacate the suit property. Despite this order of the court, the respondent/applicant deposed that its effort to fence

off its land were defeated since the Respondent forcibly ejected them. This, the deponent added, qualified the need for security.

4. In addition to the foregoing, the deponent deposed that the Respondent has not given it an alternative parcel of land as was suggested by the court and maintained that it is intend on occupying their land rightfully and in execution of the decree.
5. Lastly, the Applicant prayed for security in the enforcement of the decree of the court and maintained that it has not enjoyed the fruits of its judgment owing to the Respondent's continued unlawful occupation of its land. The Applicant also deposed that the application has merit and prayed that the same be allowed.

### **Response to the application**

6. The plaintiff/respondent did not file any response to the application.

### **Submissions**

7. The court directed that this application be canvassed through written submissions. The Respondent did not file its submissions. The Applicant filed its submissions dated 15<sup>th</sup> December 2025.

- 8.** The Applicant submitted that judgment in this suit was delivered on 16<sup>th</sup> February 2023 in its favour. The respondent/applicant further submitted that, on 21<sup>st</sup> July 2023), the Respondent made an application for review and stay of execution of the aforesaid judgment. However, the court dismissed the application for review and stay of execution dated 21<sup>st</sup> July 2023 on 14<sup>th</sup> July 2025.
- 9.** The Applicant drew this court's attention to the fact that the suit herein has taken more 17 years in court, which time the Respondent has been occupying the Applicant's land. It was also noted that the Respondent did not file a replying affidavit despite their counsel on record having been served with the application. The Applicant submitted that the instant should application should be allowed, the same being unopposed by the plaintiff/respondent.
- 10.** Further to the above, the respondent/applicant submitted that the plaintiff/respondent has never appealed the judgment of the court and that, it is now two and a half years since the Respondent was ordered to vacate the suit premises, which time the respondent applicant argued was enough for the

Respondent to have put its house in order for purposes of complying with the orders of the court.

- 11.** Lastly, the Applicant submitted that the Respondent was at some point willing to provide an alternative parcel of land but the same has never been forthcoming. In the circumstances, the Applicant submitted that there is nothing that prevents the Respondent from being evicted from the suit property and prayed that its application be allowed as the same is merited.

### **Issues, Analysis and Determination**

- 12.** After analyzing the application, supporting affidavit, the submissions filed by the Applicant, as well as the decree issued by the court on 16<sup>th</sup> June 2023, this court has set out the following two issues for determination. Foremost, whether the Respondent should vacate and/or be evicted from the suit property and, who should bear the costs of the application.
- 13.** The court on 16<sup>th</sup> June 2023 ordered and decreed that:

*“A declaration is hereby issued that the defendant is the lawful owner of land parcel number Kisii Municipality/Block II/132. However, in the wider interest of justice, the plaintiff shall give the defendant an*

*alternative piece of land measuring approximately 0.2 hectares in the same location but away from the golf course in exchange for parcel number Kisii Municipality Block II/132 within 120 days, failing which the defendant shall be at liberty to evict the plaintiff''.*

**14.** Obedience of court orders is central to maintaining the rule of law as well as the administration of justice, and without which, anarchy would prevail. Time and again, courts have emphasized the need to obey court orders, even where such orders are adverse to the party expected to obey them. In the same vein, it has been held that a party cannot decide on whether or not to obey a court order.

**15.** In **Shimmers Plaza Limited v National Bank of Kenya Limited, Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ)**, the Court of Appeal observed as hereunder concerning obedience of court orders:

*We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and*

*a person does not choose whether to obey a court order or not...The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.*

**16. Equally, in DT. Dobie Company (Kenya) Limited v Joseph Mbaria Muchina & another [1980] KECA 3 (KLR),** the court cited the case of **Hadkinson v Hadkinson [1952] 2 All ER p 567** where it was held:

*“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction, to obey it unless and until, that order is discharged. The uncompromising nature of this obligation is shown by the fact that it*

*extends even to cases where the person affected by an order believes it to be irregular or even void.”*

**17.** The court’s order in the instant case was very clear. The Respondent was to give the respondent/applicant an alternative parcel of land in the terms prescribed by the decree within 120 days, failing which the Applicant would be free to evict the Respondent.

**18.** The respondent/applicant has submitted that the plaintiff/respondent has not complied with the order, two and a half years since the said orders were issued by the court. The court notes that the instant suit has taken almost two decades in the courts, which period the respondent/applicant has not been able to enjoy and use its land. The court also notes that plaintiff/respondent neither bothered to file its response nor submissions.

**19.** The judgment of the court in this suit has never been appealed, by the Respondents who continue to occupy the Applicant’s land in blatant disregard of the court’s order dated 16<sup>th</sup> June 2023. The Respondent’s conduct cannot be tolerated. The Applicant has suffered injustice for far too long and it is

time this court cracks the whip on the Respondent, being cognizant of the fact that justice delayed is justice denied.

**20.** Accordingly, the Applicant's application dated 29<sup>th</sup> June 2023 is hereby allowed. The Respondent is ordered to vacate the suit property forthwith, failing which the Applicant should proceed and evict the Respondent. The OCS Kisii Police Station to provide security ensure compliance with this order.

**21.** The costs of this application shall be borne by the Respondent.

**22.** Orders accordingly.

Ruling dated, signed and delivered virtually via the Teams Platform this 17<sup>th</sup> day of December, 2025.

Hon. Dr. iur Nyagaka

Judge

In the presence of,

E. Anyona Advocate for the Defendant/Applicant

Mr. Linus Okok Advocate for the Plaintiff/ Respondent

