



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MURANG'A
E.L.C NO 172 OF 2017

DOUGLAS KARIUKI - PLAINTIFF

VS

FRANCIS IREGI MWANGI - DEFENDANT

RULING

1. This is a ruling in respect to the Notice of Motion dated 24.01.2019 by the Plaintiff/ Applicant brought under section 3A of the Civil Procedure Act and Order 45 of the Civil Procedure Rules seeking the following orders;

- a. In furtherance of the Judgment issued herein that eviction orders do issue against the Defendant in all the suit lands namely BLOCK 2/762 AND BLOCK 2/748.
- b. That the Honourable Court be pleased to issue an order that the officer commanding Murang'a police station provide security during the eviction process.
- c. Such further order as the Honourable Court may deem fit to grant.
- d. That costs be in the cause.

2. The application is premised on the following grounds;

- a. The Court decreed on 17.05.2018 that the Plaintiff is the rightful owner of the property and the Defendant was ordered to vacate the suit property within the next 60days.
- b. That despite having been served with this Court's order in person, the Defendant has failed, ignored and refused to vacate the suit lands.
- c. The Plaintiff is unable to use / develop his property and is being denied the fruits of this judgment.
- d. The Applicant has no other way of enforcing the said order unless the Defendant is forcefully evicted
- e. That the judgment should be reviewed to include that the officer commanding Murang'a police station will provide security and maintain order during the eviction.

3. The application is also supported by the affidavit of Douglas Kariuki the Applicant, herein, who largely reiterates the grounds on the face of the application and avers that when he visited the Murang'a police station he was advised that the police should be authorized by an order of this Court to provide security and maintain order during the eviction process.

4. There is a return of service on record indicating that service of this application was effected on the firm of H.K NGUGI who were on record for the Defendant during trial of the suit herein. Despite service there is no response from the Respondent or his Advocate to the application hence the application is on the face of it is unopposed.

5. The judgment that the Applicants seeks to execute was delivered by this Court on the 17th May 2017 in which it was the finding of the Court that;

“ The suit property belongs to the Plaintiff and thus the Defendant is in occupation of it was without permission of the Plaintiff the Defendant is ordered to vacate the suit property within 60 days of the date of the judgment and in default eviction orders to issue as per the provisions of the law”

6. The Applicant has premised his application on the ground that the Respondent, despite being served with the Courts order in person, has failed ignored and refused to vacate as ordered by the Court. A decree was extracted therefrom and issued on the 12/6/18.

7. **Order 22 Rule 6** of the Civil Procedure Rules provides as follows;

“Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:

Provided that, where judgment in default of appearance or defence has been entered against a Defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days’ notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution (emphasis is mine).

8. The application does not disclose if the decree was served on the Respondent. I have perused the Court file and note that the Applicant has not provided evidence that the Respondent was duly served with the orders as extracted notwithstanding his deposition in his affidavit. Such evidence would be in form of an affidavit of service. There was none.

9. It would be noted from the Court record that the suit proceeded exparte. The judgment was also read in the absence of the Defendant. The more reason the Applicant was obligated by law to serve the Defendant with the decree. It did not discharge this duty.

10. For that reason, I decline to grant the orders.

11. The application is dismissed. I make no orders as to costs.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANGA THIS DAY OF 24TH DAY OF JUNE 2019.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Wanjama HB for Kimwere for the Plaintiff/Applicant

Defendant/Respondent – Absent

Kuiyaki and Njeri, Court Assistants