



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND COURT

AT KERICHO

CIVIL SUIT NO. 24 OF 2007

LUCIO MATINGWONY (Suing as the administratrix of the estate of

KIMALEL MATINGWONY (DECEASED).....PLAINTIFF/RESPONDENT

VERSUS

JEREMIAH CHIRCHIR.....1ST DEFENDANT/APPLICANT

ERICK CHIRCHIR.....2ND DEFENDANT

GEOFFREY CHIRCHIR.....3RD DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL.....5TH DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Plaintiff's application dated 7th February 2019. The said application is brought pursuant to the provisions of section 3A, 38A of the Civil Procedure Act, Order 22 Rule 29 and Order 51 rule1 of the Civil Procedure rules, section 19 of the Environment and land Court Act and all enabling provisions of the law. The Applicant seeks the following orders:

a) Spent

b) That an eviction order do issue against the Defendants herein who were held to have no lawful interest in that property known as L.R No. KERICHO/KABIANGA/1129 pursuant to the judgment and decree of this honourable court dated 14th September 2018 and issued on 11th October 2018.

c) That an order do issue that Hegeons auctioneers court bailiffs be duly appointed to evict the defendants / respondents from the parcel of land known and KERICHO/KABIANGA/1129

d) That an order do issue directing the District Surveyor and District Land Registrar, Kericho to visit the parcels of land known as L.R No KERICHO/KABIANGA/1128 and 1129 with a view to ascertaining and restoring the respective boundaries in line with the Registry Index Map (RIM).

e) That an order do issue directing the Officer Commanding Station (OCS) Sosiot Police Station to provide security during e survey exercise to be undertaken on the properties known as L.R.NO KERICHO/KABIANGA/1128 AND 1129.

f) That the costs of this application, eviction and survey exercise be borne by the Defendants/Respondents.

2. The application is anchored on the grounds stated on the face of the Notice of Motion and the applicant's supporting affidavit sworn on the 7th February 2019. Briefly stated, the applicant obtained a judgment against the defendants who have been unlawfully occupying 4.8 hectares of the applicant's parcel of land which they hived off from land parcel no. KERICHO/KABIANGA/1129 and created new titles no. 2406 and 2407. The court directed that the land Registrar do rectify the registers of the subject parcels of land by cancelling the titles for parcels no.

2406 and 2407 so as to restore the register of title no. 1128 and 1129 in the manner they were before the sub-divisions. The Land registrar has since rectified the titles accordingly but the defendants have adamantly refused to vacate the 4.8 acres comprised in parcel no. 1129. It is against the said background that the applicant seeks an eviction order.

3. The application is opposed by the 1st Respondent through his replying affidavit sworn on the 30th April 2019. In essence the 1st Respondent depones that he has not refused to move from the suit property but he is requesting for a period of three months to enable him relocate his family.

4. The application was prosecuted by way of oral submissions. In his submissions counsel for the Applicant relied on the applicant's supporting affidavit. He submitted that ever since the judgment was delivered more than 7 months ago, the 1st, 2nd and 3rd defendants have disobeyed the orders of the court and continued to illegally occupy the suit property thus necessitating the filing of the instant application. He stated that the respondent's request for more time is not made in good faith as the judgment was delivered on 14th September, 2018. He prayed that an eviction order be issued against the Defendants.

5. In her submissions counsel for the Defendants/Respondents submitted that the Defendants did not wish to deny the Plaintiff from enjoying the fruits of her judgment and all they were seeking was a period of 3 months to enable them seek alternative accommodation so that they can vacate the suit property. She stated that the 1st Respondent has been residing on the suit property since 1967 and he has children who go to school so he needs time to construct a new house for his family. She submitted that the Respondent has been rendered destitute as all his investments are on the suit property. She annexed a copy of a court order dated 27th April, 2016 to the effect that the Respondent undertook to compensate her for plucking his tea.

6. In response to the order annexed to the Respondent's affidavit, counsel for the Applicant submitted that the same was not a true reflection of what transpired in court on 27.4.2016. He stated that the order was a distortion of what the court transpired in court as the Plaintiff made an undertaking to pay Kshs. 20,000 to the 1st Defendant as compensation for plucking the tea claimed by the 1st Defendant in the event that the Plaintiff's suit did not succeed. Therefore, since the Plaintiff's suit succeeded, the 1st Defendant cannot enforce the said court order.

Issue for determination

7. The main issue for determination is whether the applicant is entitled to the orders sought, key among them being an order of eviction against the respondents.

Analysis and determination

8. I have considered the application, affidavits and rival submissions. It is common ground that the plaintiff was declared to be the owner of 4.8 hectares previously comprised in land parcel no. KERICHO/KABIANGA/1129 and is entitled to possession, use and occupation thereof. Furthermore, the court issued a permanent injunction restraining the defendants from interfering with the suit property. Following the said judgment, the plaintiff was at liberty to apply for an eviction order against the respondent in order to regain possession of the suit property. The Respondent's application for stay of execution pending appeal was dismissed. It appears the Respondent has opted not to pursue the intended appeal and now merely intends to delay the day of reckoning. The defendants have had nine months to move out of the suit property and they cannot be allowed to continue abusing the process of the court.

9. As was stated in the case of **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63**

“To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the court”.

10. Litigation must come to an end and unless there are good grounds to the contrary, a party who has obtained judgment is entitled to the fruits of his judgment. It is therefore my finding that the applicant is entitled to an orders sought.

11. The upshot is that the application is granted as prayed and I make the following orders:

- a) An eviction order is hereby issued against the defendants evicting them from land parcel no. KERICHO/KABIANGA/1129 pursuant to the judgment and decree of this honourable court dated 14th September 2018 and issued on 11th October 2018.
- b) An order is hereby issued directing Hegeons Auctioneers and court Bailiffs to evict the Defendants/Respondents for the parcel of land known as L.R No. KERICHO/KABIANGA/1129
- c) An order is hereby issued directing the District Surveyor Kericho and the District Land Registrar Kericho to visit the parcels of land known as L.R No. KERICHO/KABIANGA/1128 and 1129 for purposes of ascertaining and restoring their respective boundaries in line with the Registry Index Map (RIM).
- d) An order is hereby issued directing the Officer Commanding Station (OCS) Sosiot Police Station to provide security during the

survey and eviction exercises to be undertaken on the properties known as KERICHO/KABIANGA/1128 and KERICHO/KABIANGA/1129.

e) The costs of this application, eviction and survey exercise shall be borne by the Defendants/ Respondents.

Dated, signed and delivered at Kericho this 21st day of June 2019

.....

J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Caleb Koech for the Plaintiff/Respondent
2. Miss Ngetich for the Defendants/Respondents
3. Court Assistant - Rotich