



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

ELC NO. 4 OF 2013

ROSEMARY CHEBET KOROS.....PLAINTIFF/ APPLICANT

VERSUS

SAMUEL KIPRONO SANG.....1ST DEFENDANT/RESPONDENT

DAVID MUSYOKA NZUKI.....2ND DEFENDANT/RESPONDENT

HOUSING FINANCE CORPORATION OF KENYA LTD...3RD DEFENDANT/RESPONDENT

RULING

Introduction

1. The Plaintiff/decreed-holder herein moved the court by way of a Notice of Motion dated 27th February 2019 seeking an eviction order against the Defendant/Judgment Debtor pursuant to the judgment of this court delivered on 28th August 2018. The application is premised on the grounds that the 1st Defendant/Respondent, Mr. Samwel Kiprono Sang has refused to vacate the suit premises within 90 days as ordered by the court. In her supporting affidavit sworn on the 27th February 2019, she depones that the Respondent was ordered to vacate the suit property within 90 days which lapsed on 26th November 2018. The said judgment stated that in case the Respondent failed to abide by the order to vacate, she was at liberty to apply for an eviction order. The Respondent applied for a stay of execution pending appeal but his application was dismissed on 15th February 2019 hence this application.

2. The Respondent resisted the application through his Replying affidavit sworn on the 2nd May 2019 in which he raises the fact that the Applicant has not yet extracted a decree pursuant to the judgment delivered on 28th August 2018. In the same breath the 1st Defendant, at paragraph 11 of his affidavit pleads for a period of two months to enable him complete the construction of another house which he intends to move to. He states that the construction has been delayed due to his poor health. He has annexed some medical records to his affidavit.

3. The application was canvassed by way of written submissions and both parties filed their submissions which I have considered.

Issue for determination

4. The singular issue for determination is whether an eviction order ought to issue against the Respondent.

Analysis and determination

5. In order to contextualize the Plaintiff's application, it is important to appreciate that judgment was entered against the Respondent on 28th August 2018 requiring the applicant to vacate the suit premises within 90 days from the date of judgment. The Respondent subsequently applied for a stay of execution pending appeal which was dismissed. Following the dismissal of the Defendant's application for stay of execution pending appeal, the Plaintiff filed the instant application seeking to evict the Respondent.

6. The Respondent seems to have abandoned his intention to lodge an appeal against the judgment herein and he is now merely buying time by raising procedural technicalities. The mere fact that the decree has not been extracted is not a ground for challenging the application for an eviction order as extracting the decree will be one of the steps in the execution process. There is clearly no good reason why the Plaintiff should be denied the fruits of her judgment.

7. The court in the case of **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63** stated as follows:

“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”.

8. Much I sympathize with the Respondent’s predicament, I am of the view that he is abusing the court process. Litigation must come to an end. In view of the foregoing, I find merit in the application and I grant it and make the following orders:

a. An eviction order is hereby granted permitting the Decree-holder/Applicant through lawful agents/and or auctioneers to enter upon the property known as L.R No. 631/457 within Kericho County and eject therefrom the judgment debtor/, Samwel Kiprono Sang and his possessions and any such other person as may be thereon on his authority.

b. The O.C.S Kericho police Station is hereby directed to provide security during the enforcement of the eviction order.

c. The costs of this application shall be borne by the 1st Defendant/Respondent.

Dated, signed and delivered, at Kericho this 20th day of June 2019.

J.M ONYANGO

JUDGE.

In the presence of:

1. Mr. Njoroge for the Plaintiff and holding brief for Miss Sambu for the 3rd Defendant
2. Miss Ngetich for the 1st Defendant/Respondent
3. Court Assistant - Rotich