

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT**  
**KERUGOYA**

**ELCC NO. 94 OF 2016**

**EMMANUEL NJOGU MUCHINA .....**  
**PLAINTIFF**

**VERSUS**

**JUDY NJERI MICERE .....**  
**DEFENDANT**

*[Notice of Motion dated 8<sup>th</sup> December 2025]*

**RULING**

1. The defendant filed the notice of motion dated 8<sup>th</sup> December 2025 seeking for inter alia the court to review and or amend its orders issued on 4<sup>th</sup> March 2024 and order that the OCS Kiamachiri Police Station to provide security during the eviction and demolition exercise on **LR Kiine/Sagana/3362**, and costs.

The application is predicated on the five (5) grounds on its face marked (a) to (f) respectively, and supported by the affidavit of Judy Njeri Micere, defendant/applicant sworn on the 8<sup>th</sup> December 2025, in which she among others deposed that the eviction order of 4<sup>th</sup> March 2024 had stated the security was to be provided by the OCS, Sagana

Police Station, but they have since learnt the suit property falls under Kiamachiri Police Station and hence the application for review.

2. The application is opposed by the Emmanuel Njogu Muchina, the plaintiff/respondent, through his replying affidavit sworn on 6<sup>th</sup> February 2026, inter alia deposing that he would be prejudiced if evicted from the premises as that is his only residential place and that he would suffer irreparable loss, as his appeal would be rendered nugatory.
3. The application was heard on 10<sup>th</sup> February 2026, when the learned counsel for the defendant and plaintiff tendered their oral submissions for and against the notice of motion that the court has considered.
4. The issues for determinations by the court in this application are as follows:
  - a. Whether the defendant has met the threshold for review/amendment of the order of 4<sup>th</sup> March 2024.*
  - b. Who pays the costs?*
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, oral submissions by the parties' learned counsel, the record and comes to the following determinations:

a) That the copy of the judgment delivered on 18<sup>th</sup> June 2021, the plaintiff commenced this suit against the defendant vide the originating summons dated 24<sup>th</sup> June 2016, which was opposed by the defendant vide her replying affidavit filed on 15<sup>th</sup> August 2016. This suit was consolidated with **Wang'uru PMCC No. 89 of 2016** for hearing. The court determined the suits and ordered as follows:

1. The plaintiff's originating summons dated 24<sup>th</sup> June 2016 is hereby dismissed with costs.
2. A declaration that the plaintiff is unlawfully occupying **Land Parcel No. Kiine/Sagana/3362.**
3. An order for eviction of the plaintiff, Emmanuel Njogu Muchina from the defendant's land parcel **Number Kiine/Sagana/3362.**
4. The plaintiff to pay the defendant mesne profits assessed at **Kshs. 100,000/=** plus interest till payment in full.
5. The costs of this suit and counterclaim to be borne by the plaintiff."

b) The record further confirms that the defendant subsequently filed an application that was heard and the orders of eviction and demolition issued on 4<sup>th</sup>

April 2024 inter alia directed that “OCS, Sagana Police Station” to provide security during the exercise. It is this part of the order that the defendant/applicant seeks to be reviewed/amend to instead require security to be provided by Kiamachiri Police Station, which is the station nearest the suit property.

c) The plaintiff/respondent has not presented any materials or evidence that points to the contrary to that by the defendant/applicant on the proximity of the suit land to Kiamachiri Police Station as opposed to Sagana Police Station. All the plaintiff/respondent states is that he has no other residential home and would be prejudiced if the application is granted and he is evicted and demolition carried out. He also states that granting the application would prejudice his appeal. Considering that the judgment in this suit was delivered on 18<sup>th</sup> June 2021, and it has not been successfully appealed against or reviewed, the plaintiff/respondent’s claim that his appeal would be rendered nugatory can only be taken as an afterthought.

d) The court has seen a Notice of Appeal dated 2<sup>nd</sup> February 2026 filed by the plaintiff and a letter seeking for proceedings of the same date. There is, however, no evidence before the court that the

plaintiff has sought for and obtained leave to file an appeal out of time, and therefore there is no valid appeal before this court that is capable of becoming nugatory. The defendant's/applicant's application to have the security to be provided by Kiamachiri Police Station instead of Sagana Police Station for being the one within the local limits of the suit property has merit.

e) On the issue of costs, **Section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya**, provides that costs follow the event unless where for good cause the court directs otherwise. In this instance, I do not find any reasonable basis to order differently and the defendant/applicant being the successful party will have costs.

6. Flowing from the foregoing determinations, the court finds and orders as follows:

**a. That the order of 4<sup>th</sup> March 2024 is reviewed by substituting the reference to OCS, Sagana Police Station with OCS, Kiamachiri Police Station, to be the one to provide security during the eviction and demolition exercise on LR Kiine/Sagana/3362.**

**b. The defendant/applicant is granted costs.**

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS  
11<sup>TH</sup> DAY  
OF MARCH 2026**

**Kibunja**

**JUDGE**

**S. M.**

**ELC**

**In the presence of:**

Plaintiff - No appearance

Defendant - M/s Ndwiga for Magee

Kinyua - Court Assistant.

**Kibunja**

**C JUDGE**

**S. M.**

**EL**