



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 36 OF 2016

LUCY WANJIRU KIBISU(Suing as the administrator of the Estate of
JOYCE WANGARI KIBISU).....**PLAINTIFF**

VERSUS

CHARLES MIYENDA CHORE.....**DEFENDANT**

RULING

(Application for eviction; judgment already entered in favour of the plaintiff for the defendant to give vacant possession; defendant not moving out voluntarily; application allowed)

1. The application before me is that dated 1 November 2018 filed by the plaintiff. It is an application seeking orders for provision of security by the OCS Naishi Police Station for the eviction of the defendant/respondent.

2. The background to the application is that the applicant sued the respondent for vacant possession of the land described as Business Plot No. 239 Nguriga, Njoro. Judgment was given in favour of the applicant on 16 November 2017 vide which the respondent was given 14 days to vacate the suit land and if he does not do so, an eviction order to issue. The respondent was also condemned to pay Kshs. 100,000/= as general damages for trespass. The respondent has not moved out of the suit land hence this application.

3. The respondent has not formally responded to the application but he had mentioned in court intention to make a proposal to the applicant to purchase the property. I allowed the parties time to see if any agreement can be reached, but none was arrived at, and that being the case, I directed the application to be heard. At the hearing of the motion, the respondent stated that he has paid the applicant for the sale of the property, but it was clarified by counsel for the applicant, that what was paid was in respect of damages to trespass.

4. I am afraid that the respondent has not given me any reason to deny the applicant the order of eviction and the order for police security during the eviction exercise. The respondent may have wished that the property was sold to him, but if the applicant is not interested, there is nothing that this court can do. I am also not persuaded that the respondent has paid any money towards the purchase of the suit property and the Kshs. 100,000/= paid is clearly payment in respect of the general damages ordered by this court. I am of the view that sufficient time has been given to the respondent to voluntarily move out but he has failed to do so. The only way in which the applicant can benefit from her judgment is to have the respondent forcibly evicted. I therefore issue an order of eviction of the defendant/respondent from the suit property. The applicant is at liberty to appoint a court bailiff or licenced auctioneer to execute the warrant of eviction. The OCS of Naishi Police Station is hereby ordered to give the requisite security during the eviction exercise. Any costs incurred during the eviction exercise and the costs of this application will be shouldered by the respondent.

5. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 25th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Cheruto holding brief for Mr. Kamonjo Kiburi for the plaintiff.

No appearance on the part of M/s Osero & Co for defendant but defendant present.

Court Assistants: Janepher Kemboi/ Patrick Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU