

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 158 OF 2009

NICHOLAS RAGAE KAMAU

PLAINTIFF

VERSUS

DOMINIC NJAU KUIBITA

DEFENDANT

RULING

1. What are before the Court for determination are two (2) pending Notice of Motion applications, both filed by the Plaintiff. Vide his Notice of Motion dated 3rd November 2025, he seeks the following Orders:

a) Spent.

b) This Honourable Court be pleased to issue directions and allocate an early hearing date for the Plaintiff's/Applicant's pending application dated 13th March 2025, which seeks

ELC SUIT NO. 158 OF 2009

Ruling

enforcement of the Court's judgment and decree and avert the Defendant's/ Respondent's contempt of order of this Honourable court.

c) The costs of this application be borne by the Defendant/Respondent.

2. Vide his Notice of Motion application dated 13th March 2025, the Plaintiff seeks the following Orders:

a) That this Honourable Court be pleased to grant an eviction order against the Respondent from the encroached area of the suit property.

b) That this Honourable Court be pleased to issue an order directing the Respondent, Dominick Kuibita, to demolish and remove all permanent structures erected on the Applicant's property forthwith, following the judgment of this court that confirmed the Respondent's encroachment onto the Applicant's land.

c) That in the alternative, this Honourable Court do grant a demolition order authorizing the Applicant and or his agents, to demolish and

remove all permanent structures erected on the Applicant's land at the Respondent's costs.

- d) That the area OCS be directed to provide security during the said eviction and demolition of the Defendant's permanently erected structures of the said encroached area.**
- e) That this Honourable Court be pleased to issue an order compelling the Respondent to surrender the original title deed to his property and sign the mutation forms to effect the excision already conducted by the Land Registrar in conjunction with the District surveyor, and beacons placed accordingly.**
- f) That in default of compliance with Prayer 5 above, the Land Registrar be ordered to cancel the Respondent's current title deed and issue a new one in line with the court ruling and the excision already conducted.**
- g) That the costs of this application be borne by the Respondent.**

3. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that following decision in his favour in this matter, the Land Registrar and the District Surveyor carried out an excision exercise on the suit parcel and beacons were placed accordingly but despite the said excision, the Defendant has refused to remove permanent structures, he erected on the said land. Further, that he has also refused to surrender his title deed and to sign the necessary mutation documents to facilitate the proper registration of new boundaries.

Response

4. The Defendant filed a replying affidavit in opposition. He avers that he is aggrieved by this Court's Ruling of 2nd October 2025 and has filed a Notice of Appeal dated 9th October 2025 thus if the Plaintiff's application is allowed, he stands to suffer irreparable damage as his intended Appeal will be rendered nugatory while the Plaintiff does not stand to suffer any prejudice.

5. The application was canvassed by way of written submissions.

Submissions

6. The Plaintiff submits that this Court having already pronounced itself on the matter and there being no stay orders, it can exercise its inherent powers to ensure that its decree is enforced as delay undermines the overriding objective under Sections 1A and 1B of the Civil Procedure Act, which obligates it, to facilitate the expeditious disposal of cases.

7. He also submits that his proprietary rights are protected under Article 40 of the Constitution thus the Defendant's continued occupation and collection of rent constitutes a direct violation of his constitutional right and deprives him of the full benefit of his property, insisting that the only effective means of enforcing the decree of this Court is through

issuance of eviction and demolition orders and that Order 22 Rule 29 of the Civil Procedure Rules empowers the Court to order the removal of any parties bound by a decree, who refuse to vacate a property.

8. To buttress his averments, the Plaintiff relied on the case **Kenya Power Lighting company Limited v Benzene Holdings Limited t/a Wyco Paints (Civil Appeal 132 133 of 2014) KECA 73(KLR) (CIV) (25 November 2016) (Judgement)**.
9. On his part, the Defendant insists that he has a chance to lodge an Appeal as soon as he receives copies of proceedings thus the Court should hold its judgement in abeyance to allow him time to lodge it. He urges the Court to strike a balance between his right to Appeal and the Plaintiff's right to execute the judgment.
10. He also urges the Court to consider that the property on the suit parcel

is worth millions of shillings, it has been his home for over twenty (20) years thus if the orders sought are granted, he stands to suffer irreparable damage and his Appeal will be rendered nugatory.

- 11.** To buttress his averments, he relied on the following decisions: **Njoroge v Githinji & 2 others (Environment and Land Appeal E002 OF 2023) [2023] KEELC 20799(KLR)**, **Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188(KLR)** and **Stanley Kangethe Kinyanjui v Tonny Ketter & 5 others [2013] KECA 378 (KLR)**.

Analysis and Determination

- 12.** I have considered the instant Notice of Motion applications including the respective affidavits as well as submissions and the only issue for determination is whether the eviction and demolition orders should issue against the Defendant and if he should be compelled to surrender the original title deed to

the suit property or sign the mutation forms to effect the excision orders issued herein.

13. Vide its Ruling dated the 21st November 2023, this Court ordered that 0.024 acres be excised from the Defendant's parcel, **LR Kiambaa/Karura/T.624** and be incorporated into the Plaintiff's parcel known as **LR Kiambaa/Karura/T.623**.

14. Dissatisfied, with the said Ruling, the Defendant filed an application seeking to review it and vide a Ruling delivered on 2nd October 2025, the said application was dismissed.

15. The Plaintiff confirms that following the Court's Ruling of 21st November 2023, the Land Registrar and the District Surveyor did carry out an excision exercise on the suit parcel and placed beacons in accordance with this Court's orders but the Defendant has refused to remove permanent structures that had encroached onto the Plaintiff's land.

- 16.** The Plaintiff contends that the Defendant has also refused to surrender his title deed and to sign the necessary mutation documents to facilitate the proper registration of new boundaries thus seeks this Court's assistance.
- 17.** On his part, the Defendant claims that he is in the process of filing an Appeal against this Court's Orders of 21st November 2023 thus the Court should hold execution of the decree in abeyance. I however note that it is trite that a party cannot have a right to apply for review and appeal against the same decision. I opine that since the Court already made a determination of the Defendant's application seeking to review the Court's decision of 21st November, 2023, he cannot seek an Appeal against it.
- 18.** I further note that this Court has not made any orders staying the execution of the impugned Ruling and Decree of 21st November 2023.

19. On execution of a Decree concerning immovable property, Order 22 Rule 29 (1) of the Civil Procedure Rules provides that:

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

20. In this instance the Court vide its Ruling delivered on the 21st November, 2023 granted very distinct orders as follows:

‘To this end, the Court gives orders that the report dated 20.9.2023 forms a basis for issuance of final orders herein. The same are; That a portion of land measuring 0.024 acres is to be excised from parcel LR Kiamba/Karura/ T.624 belonging to the defendant, and the same shall be incorporated into plaintiff’s parcel LR Kiambaa/ Karura/T. 623. The excision is to be done at the boundary of the aforementioned two parcels. The

land registrar is to rectify the respective titles accordingly.'

21. The Defendant sought for a review of the said Orders, which this Court declined. Further, the Defendant has not denied that the Land Registrar and Surveyor have already undertaken the exercise as directed by the Court and established beacons. However, the Defendant has declined to move from the portion already demarcated for the Plaintiff and also refused to sign the mutation forms, so as to rectify the title.

22. The Court stated as follows in **Al Yusra Restaurant Limited v Kenya Conference of Catholic Bishops & another [2025] KEHC 7288 (KLR):**

"A decree holder is entitled to enjoy the fruits of its judgment, and once any stay is lifted or lapses, the decree becomes enforceable.."

23. Based on the facts before Court while relying on the legal provisions

quoted and associating myself with the decision cited, I find that since there is no Order staying execution of the impugned Orders of 21st November, 2023, noting that the beacons were already established as directed by the Court, the Plaintiff is indeed entitled to enjoy the fruits of the Decree herein. I opine that there are hence no plausible reasons to warrant the staying of enforcement of the said Ruling.

24. In the foregoing, I find the instant Notice of Motion applications merited and will allow them in the following terms:

a) An eviction order be and is hereby issued against the Respondent from the encroached area of the suit property.

b) The Respondent, Dominick Kuibita, is hereby directed to demolish and remove all permanent structures erected on the Applicant's property within thirty (30) days from the date hereof or in the alternative, a demolition order is hereby

issued authorizing the Applicant and or his agents, to demolish and remove all permanent structures erected on the Applicant's land at the Respondent's costs.

- c) The area OCS is hereby directed to provide security during the said eviction and demolition of the Defendant's permanently erected structures on the said encroached area.
- d) The Respondent is hereby directed to surrender the original title deed to his property and sign the mutation forms to effect the excision already conducted by the Land Registrar in conjunction with the District surveyor, and beacons placed accordingly.
- e) In default of compliance with Prayer (d) above, the Land Registrar be ordered to cancel the Respondent's current title deed and issue a new one in line with the Court Ruling and the excision already conducted.
- f) That the costs of this application be borne by the Respondent.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
11TH DAY OF MAY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Kimani for Plaintiff

Andrew Gachoka for Defendant

Court Assistant: Joan