



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 374 OF 2017

MUSAYA MAPESA.....PLAINTIFF/APPLICANT

VERSUS

BOYI SITAVU

MAJONI SITAVU

BARASA SITAVU

BAKARI MAKOKHA

JOSEPH MATIMBA.....DEFENDANTS/RESPONDENTS

RULING

The application is dated 23rd May 2019 and is brought under Sections 1A, 1B & 3A of the Civil Procedure Act & Order 22 and 51 of the Civil Procedure Rules 2010 seeking the following orders;

1. That the application herein be certified as urgent.
2. That the court do issue an order directing the OCS Matete Police station to assist in the forceful eviction of the respondent by demolishing the shop structures from land parcel No. N. Kabras/Kivaywa/306.
3. That the costs of this application be provided for.

It is based on the grounds that judgment debtors/defendants have failed, refused and or neglected to willingly vacate the suit land namely N. Kabras/Kivaywa/306. That the judgment debtors were served on 20th February, 2019 with the decree of this court given on 25th September, 2018. That it is more than 3 months since the said decree was served on the judgment debtor/defendants yet they have not willingly moved out. That execution of the decree can only be effectively undertaken by police officers under the command of the OCS Matete Police Station which is the nearest to the suit land. That the OCS will not execute the decree unless directed by this honourable court.

The 1st respondent submitted that the applicant brought this suit seeking to evict all the six of them from suit parcel namely N. Kabras/Kivaywa/306 and he is the only one who appeared because it is only him who bought a small portion from him and put up a toilet. That the rest of the defendants/respondents do not reside or have anything to do with the suit plot herein namely N. Kabras/Kivaywa/306. That all of the respondents who were sued and himself have shops on parcel namely N. Kabras/Kiliboti/492 which is owned by the Kakamega County Government and borders the applicants land but there is an access road. That upon conclusion of the case herein the plaintiff extracted the eviction order and directed police to demolish their shops situated on the parcel namely N. Kabras/Kiliboti/492 a fact that let them to rush and file a suit before Butali Court seeking to restrain him from trespassing or demolishing their shops on the adjacent parcel of land herein. That when the applicant now seeks orders to compel the OCS to enforce the order, he is cunningly trying to force the police to cross and demolish their shops situated on different parcel of land they have cited which will occasion a serious miscarriage of justice. That the applicant has been claiming that his land extends to the access road where the shops are situated without proof.

This court has carefully considered the application and the submissions therein. It is a finding of fact that on the 26th September 2018, the court entered judgement for the applicant against the respondents in the following terms;

1. The 1st to 4th defendants, their assigns or agents are to vacate the suit land, land parcel No. N/KABRAS/KIVAYWA/306 within

the next 3 (three) months from the date of this judgement and in default an eviction order to issue forthwith.

2. Costs of this suit to the plaintiff.

That the respondents were served on 20th February, 2019 with the decree of this court given on 25th September, 2018. It is more than 3 months since the said decree was served on the respondents/defendants yet they have not willingly moved out. I find that the execution of the decree can only be effectively undertaken by police officers under the command of the OCS Matete Police Station which is the nearest to the suit land. The respondent have not appealed against this decision. The order is clear that the eviction is from land parcel No. N/Kabras/Kivaywa/306 and not any other parcel. I find this application is merited and I grant the following orders;

1. That the OCS Matete Police station to assist eviction of the respondents from land parcel No. N. Kabras/Kivaywa/306.

2. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH SEPTEMBER 2019.

N.A. MATHEKA

JUDGE