



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 614 OF 2013

JULIUS NGIGI MUNJUGA.....PLAINTIFF

VERSUS

THE CHAIRMAN, BOARD OF GOVERNORS

MURANG'A COLLEGE OF TECHNOLOGY

PRIMARY SCHOOL.....DEFENDANT

RULING

The applicant has moved this Court vide an amended Notice of Motion pursuant to leave granted on 24th June 2019 seeking the following orders:

(1) That this Honourable Court be pleased to order the defendant to remove all fencing around and across the plaintiff's land being MURANGA MUNICIPALITY/BLOCK 11/257 and the O.C.S Muranga Police Station to enforce the order.

(2) That this Honourable Court be pleased to allow the plaintiff to remove the fencing put by the defendant around or across MURANGA MUNICIPALITY/BLOCK 11/257 at the defendant's costs if the defendant fails to remove the same within the period stipulated by the Court and the O.C.S Muranga Police Station to enforce the order.

(3) That the defendant to bear the costs of this application.

the application is based on eight grounds shown on the face of the said application supported by the affidavit of the applicant sworn on 28th June 2019. that affidavit is further supported by numerous annexures thereto.

APPLICANT'S CASE

The applicant in his affidavit in support of the application deponed that this Court delivered judgment in his favour on 5th May 2017 where it ordered inter alia that the defendant to remove all fencing around or across the plaintiff's property and to forthwith cease from any or further encroachment upon the plaintiff's property being MURANGA MUNICIPALITY/BLOCK 11/257.

The applicant also stated that the Court issued a permanent injunction restraining the defendant by itself, its servants, agents or anyone acting through it from trespassing, encroaching, entering, taking possession, fencing, working therein, constructing, developing or in any other way interfering with the plaintiff's quiet possession and enjoyment of all that land being MURANGA MUNICIPALITY/BLOCK 11/257.

The defendant was dissatisfied with the said judgment and filed an appeal being C.A No. 153 of 2017 in the Court of Appeal at Nyeri. The said Appeal proceeded for hearing on 4th June 2018 and by a judgment delivered on 17th October 2018, the Court of Appeal dismissed the same with costs. After the dismissal of the said Appeal, the applicant attempted to enforce the decree through the Office of the O.C.S Muranga Police Station but he refused to intervene stating that he be furnished with an order directing him to do so. The applicant further deponed that the defendant is reinforcing and repairing the live fence on the suit property where there are spaces contrary to the orders of this Court and that it is not possible to enforce the orders of this Court without Police assistance since it will be inevitable that the defendant will put up resistance which will threaten peace and security. He also deposed that the defendant being a Primary School makes execution of the decree sensitive and that the same cannot therefore be done without Police supervision.

In conclusion, the applicant urged that it is in the interest of justice for this Court to grant the orders sought for the maintenance of peace and order in the process of execution of the orders of this Court.

RESPONDENT/DEFENDANT'S CASE

The defendant/respondent did not file any response to the application. They did not also attend Court during the inter-partes hearing of this case. The case was therefore ordered to proceed ex-parte.

ANALYSIS AND DECISION

I have considered the affidavit evidence, submissions of counsel for the applicant and the applicable law. I find from that affidavit evidence that the respondent did not file any documents in response to this application or even attend Court during the hearing. I also find that the respondent is a learning institution where the proprietor is potentially hostile to the execution process that require him to implement the decree of this Honourable Court. It is also my finding that being an institution of learning with young children, there is need to ensure that peace and order is observed during the execution process. This Court has previously made orders for Police assistance for purposes of executing Court orders and decree. In the case of **Republic Vs the Registrar of Societies & others, Misc. Civil Application (J.R) No. 24 of 2014 (Mombasa) (UR)** where the ex-parte applicants were granted orders directing the Police to assist the Court bailiff in restoring possession of the suit premises to the ex-parte applicant. Again in the case of **Claire Adamba Okanga Vs Godfrey Gichuki Waiharo, Civil Appeal No. 69 of 2012 Nairobi (UR)**, the Court also ordered the Officer Commanding in Charge of the Police Station to assist the appellant in enforcing the Court order. In light of those decisions, I am satisfied that this is a case where the orders being sought are deserving.

VERDICT AND DISPOSAL ORDER

In light of the foregoing, I hereby make the following orders:

(1) The plaintiff be and is hereby allowed to remove the fencing put by the defendant around or across MURANGA MUNICIPALITY/BLOCK 11/257 at the defendant's cost.

(2) The Officer in Charge of Muranga Police Station is directed to provide security to the personnel that will be engaged in the removal of the fencing around and across the plaintiff's land parcel No. MURANGA/MUNICIPALITY/BLOCK 11/257.

(3) The expenses arising out of the execution of the decree will be met by the respondents.

(4) The respondents shall also bear the costs of this application.

RULING DATED, DELIVERED, and SIGNED in open Court at Kerugoya this 20th day of September, 2019.

E.C. CHERONO

ELC JUDGE

20TH SEPTEMBER, 2019

In the presence of:

1. Applicant/Advocate – absent
2. Respondent/Advocate – absent
3. Mbogo Court clerk – present