



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE No. 77 OF 2019

MARY WAITHERA MUIRURI.....PLAINTIFF

VERSUS

KURIA NG'ANG'A.....DEEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 31st July 2019, an application seeking the following orders:

a. Spent.

b. Spent.

c. That eviction warrants pursuant to the decree made on 29.6.2019 be issued to Waruinge Peter Waititu t/a Digit Auctioneers of P.O Box 780-20300 Nairobi.

d. That the officer commanding Mirangi-ini Police Station do provide security and maintain peace during execution of the eviction warrants.

e. That costs of the application be provided for.

2. The application is supported by an affidavit sworn by Stephen Oyugi Okero, an advocate practicing as Oyugi & Company Advocates, which firm is on record for the plaintiff/applicant. He deposed that despite decree being issued herein on 29th June 2017, the defendant has failed to vacate the suit premises.

3. Though served, the defendant neither responded to the application nor attended court at its hearing.

4. The record herein shows that judgment was delivered on 29th June 2017 by Munyao J as follows:

2. The plaintiff is the registered proprietor of the land parcel Nyandarua/Tumaini Ngorika Block 1 (Nyandarua)/57 measuring 2.33 Ha and Nyandarua/Tumaini Ngorika Block 1 (Nyandarua)/67 measuring 0.610 Ha. The plaintiff is the wife of the late Daniel Muiruri Ng'ang'a (the deceased), who was the brother of the defendant. It is pleaded in the plaint that prior to the demise of the deceased, the defendant was allowed to stay on the suit premises as a licensee and allowed to cultivate on part of the suit premises for his own subsistence. The plaintiff pleaded that in violation of her rights as proprietor, the defendant had embarked on cultivating the land for his commercial gain to the exclusion of the plaintiff. It was also pleaded that the defendant had filed a suit before the Land Disputes Tribunal which he failed to prosecute. In the suit, the plaintiff sought orders of permanent injunction to have the defendant restrained from the suit properties, general damages, and costs of the suit. ...

25. Given my above analysis, I have no reason why I should not allow the plaintiff's case. I do allow it. I do note that the defendant has been on the land parcel No. 57 for a while and the only accommodation I can give him is to permit him a period of 6 months for him to move out. If he does not move out within this period of time, an order of eviction do issue. In any event, the order of permanent injunction against the defendant in respect of both the land parcels No. 67 and 57 is allowed, and on expiry of the 6 month window, he should not enter, be upon, utilize or in any other way interfere with these two parcels of land.

26. There was a claim for general damages. In recognition of the plaintiff's right over the suit properties, I award the plaintiff a sum of Kshs. 100,000/= in general damages, as the defendant failed to vacate the land that he is in occupation of despite being given notice that his licence has been revoked.

27. The plaintiff shall also have the costs of the suit and of the counterclaim.

5. Subsequently, decree was issued on 15th August 2018. The defendant sought stay of execution pending appeal through an application dated 25th February 2019. The application was dismissed through a ruling dated 3rd July 2019. Since the defendant has not contested the present application, I take it that the decree has not been satisfied. I therefore see no reason why the application should not be allowed. Nevertheless, there is one small matter that the decree holder needs to attend to.

6. The rules provide a procedure to be used to apply for execution of a decree. In that regard, **Order 22 Rule 6 of the Civil Procedure Rules** provides:

Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A: ...

7. Further, **Order 22 Rule 7 (2)** provides:

(2) Save as otherwise provided by sub rule (1) or by any other enactment or rule, every application for the execution of a decree shall be in writing, signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—

8. There is good sense in these requirements since after all, procedure is the handmaiden of substance. It has not been demonstrated that the plaintiff will suffer any prejudice if she complies with these rules. Among others, just the same way a party must pay court fees when filing a plaint, there are fees payable prior to execution. Further, the Deputy Registrar and the registry are better placed to ascertain the standing of a particular auctioneer to whom warrants are to be issued. I have perused the record herein and I have not seen any application of the sort contemplated by the above rules. Even though I am inclined to allow the application, I will make additional orders to ensure compliance with the rules.

9. In the end, I make the following orders:

a. The plaintiff to comply with the procedure for execution of decrees.

b. Upon such compliance, eviction warrants pursuant to the decree made on 29.6.2017 be issued to Waruinge Peter Waititu t/a Digit Auctioneers of P.O Box 780-20300 Nairobi or to such other duly licensed auctioneer.

a. That the officer commanding Mirangi-ini Police Station to provide security and maintain peace during execution of the eviction warrants.

b. Costs of the application shall be to the plaintiff.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of September 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Oyugi for the plaintiff/applicant

No appearance for the defendant/ respondent

Court Assistants: Beatrice & Lotkomo