



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 638 OF 2017

PETER KARANJA.....PLAINTIFF/APPLICANT

-VERSUS-

MIRIAM MAGDALINE KINYURU.....DEFENDANT/RESPONDENT

RULING

The matter for determination is the *Notice of Motion* application dated **25th March 2019**, brought by the Plaintiff/Applicant herein under **Section 3A** of the **Civil Procedure Act, Cap 21** against the Defendant/Respondent seeking for orders that:-

- 1) That eviction orders do issue against the Defendant/Respondent that she vacates parcel of land known as Karai/Gikambura/T.500.**
- 2) That the orders be effected and/or executed by court Bailiff/Auctioneers known as Outright Waves Auctioneers.**
- 3) That the OCS Kikuyu Police Station do ensure peace, law and order are maintained.**
- 4) That costs of this application be provided for.**

This Application is premised on the grounds that Judgment was delivered in the Plaintiff's/Applicant's favour and a Decree drawn and served upon the Defendant/Respondent. However the Defendant/Respondent has been arrogant and she has refused to comply with Court Decree to vacate the subject land. Further that court orders are not given in vain and the Plaintiff prays for the orders to ensure the Court Orders are effected.

In his *Supporting Affidavit*, he reiterated the grounds on the face of the Application and further averred that the Defendant/Respondent had ignored to comply with the said Orders and has been hostile to him and it is therefore fair and just that eviction orders are issued against her. He further averred that he is anticipating resistance from her and he therefore wished **OCS Kikuyu Police Station** to ensure law and order is maintained during the exercise.

Despite service the Defendant/Respondent did not respond to the application. The Court directed the Applicant to canvass the application through written submissions and in compliance with the said directive, the Plaintiff/Applicant filed his submissions on the **7th May 2019**, which the court has now carefully read and considered.

It is evident that the Plaintiff/Applicant filed this suit against the Defendant on **5th July 2017**, and sought for various Orders. Among the Orders sought is for direction that the Defendant do vacate the suit property **Karai/Gikambura/T.500**, forthwith and remove the caution.

It is also evident that the Defendant did not enter appearance nor file defence.

Consequently after the formal proof, *Judgment* was entered in favour of the Plaintiff on **16th November 2018**. Thereafter a *Decree* was issued on **10th December 2018** and served upon the Defendant on **15th December 2018** as per the *Affidavit of Service* of **Willis Odhiambo Agayi** sworn on **8th January 2019**.

The Plaintiff/Applicant has averred in his application that even after service of the said *Decree*, the Defendant/Respondent has refused to vacate the suit property and therefore Plaintiff cannot enjoy the fruits of his Judgment.

The application is brought under **Section 3A** of the **Civil Procedure Act** which gives the court the power to issue any orders that are necessary for the end of justice to be met. The Plaintiff came to court to seek for justice. Judgment was entered in his favour but he is yet to reap the fruits of the said Judgment because the Defendant/Respondent is yet to move out of the suit property.

Given that the Defendant/Respondent is not willing to vacate the suit property wilfully, then the Court finds that as provided by **Section 152G** of the Land Act then this Court has no option but to direct that the Defendant herein be evicted from the suit property. **Section 152 G(b)** provides that:-

“...all evictions shall be carried out in strict accordance with the following procedure;- be preceded by the presentation of the formal authorization for the Action.”

The Plaintiff/Applicant has come to court seeking formal authorization to evict the Defendant/Respondent. The Defendant/Respondent was served with the present application but she failed to turn up in court to challenge the same.

Consequently, the Court finds that the **Notice of Motion** dated **25th March 2019**, is merited and the same is allowed entirely in terms of **prayers No.1, 2, 3** with costs to the Plaintiff/Applicant.

It is so ordered.

Dated, Signed and Delivered at Thika this 12th day of September 2019.

L. GACHERU

JUDGE

12/9/2019

In the presence of

Peter Karanja – Applicant in person

No appearance for Defendant/Respondent

Lucy - Court Assistant

Court – Ruling read in open court in the presence of the Plaintiff/Applicant and no appearance by the Defendant/Respondent

L. GACHERU

JUDGE

12/9/2019