



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANGA

ELC NO.449 OF 2017

JAMES WACHIRA MAINGI.....PLAINTIFF /APPLICANT

VS

BENSON KAMAU NJUGUNA.....DEFENDANT /RESPONDENT

RULING

1. This is a ruling in respect to the Notice of Motion application dated 21/2/2019 filed under certificate of urgency by the Plaintiff / Applicant seeking the following orders;

a. Spent.

b. That an eviction order be and is hereby issued against Benson Kamau Njuguna the Defendant / Respondent herein from land parcel number MAKUYU/MAKUYU BLOCK II/1263 forthwith in execution of Court order dated 13/12/2018.

c. That HIPPO Auctioneers to execute the eviction order.

d. That the Officer commanding or Administration Police Commandant Makuyu Police station to supervise and offer security during the eviction exercise.

e. That costs of this application be provided for;

2. The application was premised on the following grounds;

a. That the judgment in this case was passed on the 31/5/2018 by this Honourable Court.

b. That the Defendant / Respondent has adamantly refused to remove himself voluntarily from the said land parcel No. MAKUYU/MAKUYU/BLOCK II /1263.

c. That it's difficult for the Plaintiff/ Applicant to enjoy the fruits of judgment.

d. That for interest of justice this Honourable Court ought to grant the orders sought.

e. That the Honourable Court has unlimited powers to grant the orders sought herein.

3. The Applicant in his supporting affidavit asserts that he is the legal owner of land parcel number MAKUYU/MAKUYU/BLOCK II /1263 which the Defendant is in illegal occupation of and the Applicant has since obtained a judgment on 13/12/2018 in his favour ordering the Defendant to vacate the said land but the Defendant has adamantly defied the Court orders and refused to vacate. That he intends to develop the suit land for his own use which is impossible to do while the Defendant remains in illegal occupation of the same. The Applicant seeks for eviction orders to issue against the Respondent.

4. The Respondent despite being duly served with the instant application as per the return of service on record dated 06/03/2019 failed to file any response neither did he heed to the hearing notice served upon him as he again failed to attend Court when the same came up for hearing. The application is thus unopposed.

5. Counsel for the Applicant submitted that the Applicant seeks for eviction orders as prayed and relied on the grounds on the face of the application particularly the refusal by the Respondent to vacate the suit land.

6. Essentially the Applicant seeks execution of the orders of this Honourable Court in its judgment delivered on 31/5/2018 and orders subsequently issued on 13/12/2018. The order of the Court precisely directed the Respondent to vacate the suit land within sixty days of the judgment and in default eviction orders to issue in accordance of the law. The period graciously allowed to the Respondent by the Court to deliver vacant possession to the Applicant of his land has since lapsed. That the Applicant is entitled to enjoy the fruits of his judgment.

7. The provisions of Order 22 Rule 29 of the Civil Procedure Rules provide for execution of a decree of immovable property and delivery of possession.

8. The Court is of the view that it is within its mandate to make further orders to serve the limited purposes of enforcing its judgment. The Court cannot fold its hands as by doing so will cause hardship to the decree holder who should enjoy the fruits of his judgement.

9. The upshot is that the application is allowed in terms of prayers 2, 3 & 4.

10. I make no orders as to costs.

11. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 17TH DAY OF OCTOBER 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Mwaniki HB for Bwonwonga for the Plaintiff/Applicant

Defendant/Respondent - Absent but served

Irene and Kuiyaki, Court Assistants