



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANGA

ELC NO.451 OF 2017

PAULINE WANJIKU NDEGWA.....PLAINTIFF /APPLICANT

VS

MARGARET MAGIRI MWANGI....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 Margaret Magiri Mwangi the Defendant / Respondent herein from land parcel number MAKUYU/MAKUYU BLOCK II/1286 forthwith in execution of Court orders 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 31/05/2018 by this Honourable Court.

b. THAT the Defendant / Respondent has adamantly refused to remove herself voluntarily from the said land parcel No. MAKUYU/MAKUYU/BLOCK II /1286.

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 her supporting affidavit asserts that she is the legal owner of land parcel number MAKUYU/MAKUYU/BLOCK II /1286 which the Defendant is in illegal occupation of and the Applicant has since obtained a judgment on 13/12/2018 in her favour ordering the Defendant to vacate the said land but the Defendant has adamantly defied the Court orders and refused to vacate. That she intends to develop the suit land for her 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 as per the return of service on record dated 6/03/2019 failed to file any response to it neither did she heed to the hearing notice served upon her as she 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 to be executed by the auctioneer under the supervision of the police for the grounds stated on the face of the application.

6. Essentially the Applicant seeks execution of the orders of this Honourable Court 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 her land has since lapsed. The Applicant is entitled to enjoy the fruits of her judgment.

7. The Respondent has been accused of defying Court orders and has failed to come forward to defend himself. That conduct must not be entertained.

8. The Court delivered judgement on the 31/5/18 in the following terms;

“That the Defendant by herself, family members employees agents and whomsoever claiming under her be and is hereby ordered to vacate land MAKUYU/MAKUYU/BLOCK11/1286 within the next 60 days and in default eviction to issue in accordance with the provisions of the law.

The costs of the suit to be met by the Defendant.”

9. The application by the Applicant is for enforcement of the orders of the Court aforesaid. There is evidence that the decree was brought to the attention of the Respondent as evidenced by the affidavit of service dated the 6/3/19.

10. 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.

11. 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.

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

13. I make no orders as to costs.

14. 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