

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 266 OF 2015

JOSEPHINE MUENI.....PLAINTIFF/APPLICANT

VERSUS

PATRICK IHACHI.....DEFENDANT/RESPONDENT

RULING

The application is dated 29th August 2019 and is brought under Section 1A, 1B and 3A of the Civil Procedure Act and Order 51 of the Civil Procedure Rules seeking the following orders:

1. That service of this application be dispensed with in the first instance.
2. That the O.C.S. Malaika Police Station be ordered to provide security during eviction of the defendant/respondents herein and or his family members and or agents from Land Parcel No. Kakamega/Shivakala/2052.
3. That an order of eviction be granted to the plaintiff/applicant in accordance with the decree issued herein on 31st of May, 2019 to have the respondent evicted forcefully forthwith.
4. That costs be provided for.

It is premised upon the affidavit of Josephine Mueni filed herewith and upon the grounds that a judgment was delivered in favour of the plaintiff/applicant on 18th September, 2018 and to date there is no appeal or stay of execution. That the plaintiff/applicant herein is unable to execute the said judgment and or decree herein due to security reasons. That the defendant was given three months to vacate land parcel No. L.R. No. Kakamega/Shivakala/2052 which he has not done to date. That the decree has already been extracted and the time within which the defendant/respondent was to move out of the suit premises has lapsed. That the defendant/respondent is evasive, unfriendly and cannot cooperate. That the plaintiff/applicant cannot enforce the orders of this honourable court without the OCS providing security hence this application.

The respondent submitted that he does not stay on the suit parcel of land number Kakamega/Shivagala/2052 as alleged as he resides on the land parcel number Kakamega/Shivagala/1159. That his interest on land parcel number Kakamega/Shivagala/2052 only existed when his mother Belpetwa Katiala Luyeku used to carry out her farming activities thereon before she died on 26th June, 2019. That upon the death of his mother his father namely Andrew Luyeku cut down all his trees on the suit parcel of land plus napier grass and as such has no activity and/or asset on the same parcel of land. That it is his honest belief that his father Andrew Luyeku and the plaintiff herein would like to use the eviction orders to damage his properties and/or affect his right of occupation on the parcel of land number Kakamega/Shivagala/1159. That the applicant's application dated 29th August, 2019 which ought to be struck out and/or dismissed with costs.

This court has considered the application and submissions therein. The application is that judgment was delivered in favour of the plaintiff/applicant on 18th September, 2018 and to date there is no appeal or stay of execution. That the defendant was given three months to vacate land parcel No. L.R. No. Kakamega/Shivakala/2052 which he has not done to date. The respondent submitted that he does not stay on the suit parcel of land number Kakamega/Shivagala/2052 as alleged as he resides on the land parcel number Kakamega/Shivagala/1159. I find that no prejudice will be suffered by the respondent if the orders are granted if indeed the defendant is not on the suit land. I find that application is merited and I grant the following orders;

1. That the O.C.S. Malaika Police Station be ordered to provide security during eviction of the defendant/respondents herein and or his family members and or agents from Land Parcel No. Kakamega/Shivakala/2052.
2. That an order of eviction be granted to the plaintiff/applicant in accordance with the decree issued herein on 31st of May, 2019 to have the respondent evicted forthwith.
3. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH NOVEMBER 2019.

N.A. MATHEKA

JUDGE