



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

E.L.C NO. 446 OF 2017

TERESIA WAMBUI KARIUKI.....PLAINTIFF/APPLICANT

VS

ANTHONY GITHAIGA KABARU.....DEFENDANT/RESPONDENT

RULING

1. This is a ruling in respect to the Notice of Motion application dated 28/3/2019 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 ANTHONY GITHAIGA KABARU the Defendant / Respondent herein from land parcel number MAKUYU/MAKUYU BLOCK II/1284 forthwith in execution of Court orders dated 2/7/18.
- c. That HIPPO Auctioneers to execute the eviction order.
- d. THAT the Officer commanding or AP 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 2/7/18 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 /1284.
- 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 /1284 which the Defendant is in illegal occupation of and the Applicant has since obtained a judgment on 2/7/18 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 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 06/03/2019 failed to file any response to it neither did he heed to the hearing notice served upon him as he 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 2/7/18 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 2/7/18 in the following terms;

“That the Defendant by himself, family members employees agents and whomsoever claiming under her be and is hereby ordered to vacate land MAKUYU/MAKUYU/BLOCK11/1284 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 notes that the orders of eviction were already given and it makes no sense to so grant again.

12. The upshot is that the application is allowed in terms of prayers c and d.

13. I make no orders as to costs.

14. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 21ST DAY OF NOVEMBER, 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Kinuthia HB for Bwonwonga for the Plaintiff/Applicant

Defendant/Respondent: Absent

Ms Irene and Ms Njeri, Court Assistant