



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

E.L.C CASE NO. 120 OF 2016

BEATRICE MGHAMBA ONYONKA.....PLAINTIFF

VERSUS

SAMWEL ONSARIGO OOGA.....DEFENDANT

RULING

INTRODUCTION

1. This Ruling pertains to the Plaintiff's Notice of Motion dated 19th June, 2019 wherein the Plaintiff seeks an order of eviction from **plot No. 37 Nyakoe Market** and an order for demolition of the Defendant's structures standing on the suit Land pursuant to the Ruling of this court dated 5th April, 2019.

2. The application is premised on the grounds stated on the face of the Notice of Motion and the Plaintiff's Supporting Affidavit sworn on the 19th June, 2019. The long and short of it is that despite the Defendant being held to be in unlawful occupation of the Plaintiff's **plot No. 37 Nyakoe market** and being ordered to vacate and deliver vacant possession thereof within 30 days of the Ruling dated 5.4.19, he is still in unlawful occupation thereof.

3. The Defendant filed a Replying Affidavit sworn on the 18th October, 2019 in which he maintains the the plot belongs to him without mentioning that there is a final order of the court against him.

4. While this application was pending the Defendant changed Advocates and filed an application for stay of execution pending appeal. The said application was dismissed on 19th November, 2019.

ISSUES FOR DETERMINATION

5. The singular issue for determination is whether the Plaintiff is entitled to an order of eviction.

ANALYSIS AND DETERMINATION

6. It is not in dispute that there is a final decision against the Defendant requiring him to vacate and deliver vacant possession of the suit property to wit, **plot No. 37 Nyakoe Market**. In his Replying Affidavit the Defendant seems to be criticizing the court's decision and insisting that he is that he is the owner of the suit property.

7. This court having relied on the report of the Land Registrar which concluded that the plot belongs to the Plaintiff, it cannot sit on appeal on its own decision by reversing the same. The Defendant is expected to abide by the court's final decision whether he agrees with it or not.

8. That being the position, I find merit in the plaintiff's application and I grant it in terms of prayer 2 thereof and make the following orders:

- a) An eviction order is hereby issued evicting the Defendant from **plot No. 37 Nyakoe Market** with immediate effect.
- b) The Defendant's structures standing on **plot No. 37 Nyakoe market** shall be demolished forthwith.
- c) The costs of this application shall be borne by the Defendant/Respondent.

Dated, signed and delivered at **Kisii** this 13th day of December, 2019

J. M. ONYANGO

JUDGE