



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERICHO**

**ELC CASE NO. 56 OF 2014 (O.S)**

**PAULINA CHEMUTAI CHIRCHIR.....PLAINTIFF**

**VERSUS**

**KIPYEGON ARAP SANG.....1ST DEFENDANT**

**MARIA TAPSAGAA CHIRCHIR.....2ND DEFENDANT**

**JACQUELINE CHEPKORIR.....3RD DEFENDANT/1ST RESPONDENT**

**PETER K. LANGAT.....4TH DEFENDANT/2ND RESPONDENT**

**JOHN ALIAS JOEL KOSKEL.....3RD RESPONDENT**

**DANIEL ALIAS DAVID ROTICH.....4TH RESPONDENT**

**JAMES CHEPKWONY.....5TH RESPONDENT**

**WESLEY SANG.....6TH RESPONDENT**

**ROBERT NGENO.....7TH RESPONDENT**

**RULING**

**Introduction**

1. The Plaintiff/Applicant moved the court by way of a Notice of Motion dated 18<sup>th</sup> December, 2017 brought under sections 3A, 38A and 51 of the Civil Procedure Act, Order 22 Rule 29 and Order 51 of the Civil Procedure Rules and section 19 of the Environment and Land Act Court Act seeking the following prayers:

- i. Spent.
- ii. That an eviction order do issue against the Respondents herein who were held to have no recognizable interest in that property known as KERICHO/CHEMAGEL/822 pursuant to the judgment and decree of this honourable court dated 26<sup>th</sup> June 2015 and issued on 16<sup>th</sup> July 2015.
- iii. That an order do issue that Hegeons Auctioneers and Court bailiffs be appointed to evict the Respondents from L.R No. KERICHO/CHEMAGEL/822.
- iv. That an order do issue directing the Officer Commanding Police Station (OCS) Sotik Police Station to provide security during the eviction exercise against the Respondents.
- v. That the costs of this application and the eviction exercise be borne by the Respondents.

2. The application is predicated on the following grounds:

a. That vide the judgment of this honourable court delivered on the 26<sup>th</sup> June 2015, it was held that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents and any other person save for those noted in the confirmed grant dated 30<sup>th</sup> July 2014 had no recognizable interest in the land parcel known as KERICHO/CHMAGEL/822 and if they were in occupation they were directed to vacate forthwith failing which the Plaintiff would be at liberty to apply for an eviction order.

b. The despite being duly served with the decree, the Respondents have refused to vacate the suit property in compliance with the court's judgment.

c. That the continued disobedience of the orders of the court by the Respondents has occasioned untold suffering and prejudice to the applicant and she has been forced to live on less than half an acre of the suit property notwithstanding the fact that she is entitled to 3.75 acres thereof.

3. In her supporting Affidavit the applicant depones that on the 12<sup>th</sup> August 2015, the District Land Registrar, Bomet one Jotham Ngeno, in the company of the District Surveyor and the Respondents visited the suit property to discuss the dispute and the District Land Registrar directed the District Land Surveyor to excise 3.7 acres rightfully belonging to the applicant and allocated the same to the Respondents in blatant disregard of the court orders and inspite of the applicant's protestations. This prompted the applicant to cite the Land Registrar for contempt of a court order whereupon he was forced to comply with the same.

4. She depones further that despite her efforts to enforce the decree of this honourable court the Respondents have defiantly disobeyed the orders of this honourable court and have illegally undertaken various developments on the suit property thus denying the applicant the fruits of her judgment.

#### **Issues for Determination**

5. There are only two issues for determination:

i. Whether the Respondents were ordered to vacate the suit property pursuant to the court's judgment dated 16<sup>th</sup> June 2015

ii. Whether an eviction order ought to issue against the Respondents

#### **Analysis and Determination**

6. It is abundantly clear from the proceedings and judgment of this honourable court dated 26<sup>th</sup> June, 2015 which I have had occasion to peruse that the Respondents were ordered to vacate the suit property as they were found to have no recognizable interest therein. Despite the said judgment and various notices being issued to the Respondents, they have tried to circumvent the said judgment by using the District Land Registrar to further sub-divide the suit property among themselves to the detriment of the applicant who is lawfully entitled to the same. This honourable court's orders must be obeyed and where it is shown that parties against whom orders are made continue to treat the same with impunity the court will not hesitate to take remedial action. It is therefore my finding that the Respondents are entitled to an eviction order.

7. Accordingly, the applicant's application succeeds and I make the following orders:

a. An eviction order is hereby issued against the Respondents herein evicting them from that property known as KERICHO/CHEMAGEL/822 with immediate effect pursuant to the judgment and decree of this honourable court dated 26<sup>th</sup> June 2015 and issued on 16<sup>th</sup> July 2015.

b. Hegeons Auctioneers and Court Bailiffs are hereby appointed to evict the Respondents from L.R No. KERICHO/CHEMAGEL/822.

c. The Officer Commanding Police Station (OCS) Sotik Police Station is directed to provide security during the eviction exercise against the Respondents.

d. The Respondents shall bear the costs of the eviction exercise and of this application.

**Dated, signed and delivered at Kericho this 16<sup>th</sup> day of February, 2018.**

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**J. M ONYANGO**

**JUDGE**

#### **In the presence of:**

1. Mr. Koech for the Applicants

2. No appearance for the Respondents

3. Court assistant - Wambany