



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 234 OF 2013

DR. WAWERU MATHU J.M.....PLAINTIFF

VERSUS

DANSON OTACHI CHIONJA.....1ST DEFENDANT

ONGERE OTACHI.....2ND DEFENDANT

RULING

(Application for police assistance to execute a warrant of eviction; judgment issued in favour of the applicant for vacant possession; respondents not moving out of suit land; application allowed)

1. The application before me is that dated 22 June 2016 filed by the plaintiff/deed holder. It is an application vide which the applicant seeks orders to have the Officer Commanding Police Division (OCPD) Kipipiri, provide security to the Court Bailiff engaged in the execution of the decree herein.

2. By way of background, the applicant filed this suit on 21 October 2011 against the defendants who are father and son. The applicant averred that he is the proprietor of the land parcel Nyandarua/Ndemi/706 whereas the 1st respondent was owner of the land parcel Nyandarua/Ndemi/458. He stated that the 1st respondent sold his land after which he trespassed into the applicant's said land parcel Nyandarua/Ndemi/706 (the suit land). In the case, the applicant sought orders of vacant possession or eviction of the respondents from the suit land, a permanent injunction against them, and orders of costs. The respondents did not file anything and did not participate in the trial. The case proceeded for hearing, and judgment was entered for the applicant, on 21 October 2015. In the judgment, the respondents were ordered to vacate the suit land within 14 days of service of the judgment and/or decree, and in default, an order of eviction to issue. An order of permanent injunction was also issued against the respondents and the respondents were also ordered to pay costs of the suit.

3. In his supporting affidavit to this application, the applicant has deposed inter alia, that the decree was extracted and served, and he has annexed an affidavit of service. He has averred that a warrant to give vacant possession was given and issued to M/s Nasioki Auctioneers. He has deposed that the auctioneer upon visiting the land expressed fear that there may be resistance and violence by the respondents. It is thus his view that for the auctioneer to execute the decree, he will need police security.

4. I have looked at the application and the reasons given. Judgment in this matter was delivered on 21 October 2015. The decree was issued on 1 December 2015. I have seen the affidavit of service sworn by one Peterson Ndegwa Mwangi, which states inter alia, that the respondents were served with the decree on 9 December 2016 (although I guess he meant the year 2015). It is apparent that they have failed to vacate the suit land as ordered and the applicant has no other option but to move to evict them.

5. I have no reason why I should not allow the applicant the orders sought. I thus allow this application and do direct that an eviction order do issue, and for the OCPD of Kipipiri to provide security to the applicant's appointed auctioneer, while executing the eviction order.

6. The applicant shall also have the costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Ikua holding brief for Mr. Mathea for the plaintiff/applicant.

No appearance on the part of the defendants/respondents.

Court Assistant :Carlton Toroitich .

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU