

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 331 OF 2014

ISADIA WASANGALE.....PLAINTIFF

VERSUS

HELLENAH MUHIGA.....DEFENDANT

RULING

The application is dated 29th May 2017 and is brought under order 21 rule 29 of the civil procedure rules seeking the following orders;

1. This honourable court be pleased to issue an eviction order for the forceful ejection of the defendant, her servants, employees, relatives, agents and or anybody claiming through her from the suit land parcel NO. Tiriki/Shamakhokho/952 forthwith and the structures the defendant has erected on the suit land be demolished.
2. The O.C.S. Seremi Police Station be ordered to effect the eviction order aforesaid.
3. Costs of this application be borne by the defendant/respondent/judgment-debtor.

The applicant submitted that, he filed this suit against the defendant/respondent who had occupied a portion of my land parcel No. Tiriki/Shamakhokho/952 and erected structures including a pit latrine and a urinal pit thereon and he sought inter alia her eviction there from and removal or demolition of the said structures. That a decree and or judgment of this honourable court was delivered on 17th March, 2015 in his favour. That the defendant/respondent was given three months from 17th March, 2015 to remove the structures she had erected on and vacate the suit land parcel No. Tiriki/Shamakhokho/952 together with her servants, employees, relatives, agents and or anybody claiming through her failing which she would be forcefully evicted therefrom and an injunction barring the defendant from trespassing onto the land was also issued as per the attached copy of the decree marked "IWSI". That as per the decree of the court the defendant/judgment-debtor/respondent was to vacate the suit land on or before 17th June, 2015 but in blatant defiance of the decree and or orders of the court above-said the defendant/respondent is still trespassing on and using a portion of the suit land parcel No. Tiriki/Shamakhokho/952 and has refused to vacate and the structures she erected thereon including a pit latrine and urinal pit are still standing thereon. That he went to Seremi Police Station where he was advised by the officer commanding station that an eviction order is required directing them to enforce the decree herein hence the present application. That it is evident that the defendant/respondent is taking both this honourable court and him for granted and is not willing to voluntarily comply with the decree of the court and peacefully vacate the suit land. That he is anxious that this litigation comes to an end and he gets an opportunity to enjoy the fruits of his successful litigation and it is his humble prayer that the orders he seeks in his application be granted. The respondent did not oppose the application.

This court has considered the application and the applicant's submissions herein. The application is based on the annexed affidavit of Isadia Wa Sangale, plaintiff/applicant and on the grounds that by the judgment/decree of this court made on 17th March, 2015 the defendant/respondent was granted three months from 17th March, 2015 to vacate the suit land L.R. No. Tiriki/Shamakhokho/952 together with her relatives, servants, employees, agents and or anybody claiming through her in default whereof the defendant was to be forcefully evicted therefrom and the structures she has erected thereon demolished. The three months given to the defendant have long expired and the defendant has refused to vacate the suit land or remove the structures she erected thereon thereby necessitating her violent ejection therefrom. It is imperative and necessary that the orders sought herein be granted in order to bring this litigation to an end and to enable the plaintiff/decree-holder/applicant enjoy the fruits of his success in litigation. I have perused the court file and indeed the orders of the court were clear and as enumerated above. The application is not opposed. I find it has merit and I grant it as prayed.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 30TH DAY OF MAY 2018.

N. A. MATHEKA

JUDGE