



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 624 OF 2007**

**EDWIN G. K. THIONGO.....1ST PLAINTIFF**

**WAWERU HOLDINGS LIMITED.....2ND PLAINTIFF**

**VERSUS**

**GICHURU KINUTHIA.....1ST DEFENDANT**

**PATTERSON NJOROGE.....2ND DEFENDANT**

**JOHN NGETHE GICHURU.....3RD DEFENDANT**

**R U L I N G**

1. Judgment in this suit was delivered in favour of the defendants by Osiemo J on 14/9/2006. Dissatisfied with the judgment, the plaintiffs lodged an appeal in the Court of Appeal. On 30/10/2015, the Court of Appeal (Shichale, Otieno-Odek and Kantai JJA) delivered a judgment on the appeal, allowing the appeal and setting aside the judgment of Osiemo J. For avoidance of doubt, the final orders of the Court of Appeal read thus:

**We believe we have said enough to show that this appeal is for allowing. Accordingly, we allow the appeal and set aside the judgment of the learned judge dated 14th September 2006. The respondents to vacate land parcels Dagoretti/Thogoto/1191 and Dagoretti/Thogoto/1192 within 6 months from today's date. Given the nature of the case, we direct that each of the parties shall bear his/her own costs.**

2. On 16/3/2017, a formal extract of the judgment was issued by the Registrar of the Court of Appeal. Both the judgment and the extracted order are annexed to the Further Affidavit sworn by Edwin G K Thiongo and filed in court on 29/6/2017 pursuant to an order made by this court on 12/6/2017.

3. On 28/4/2017, the plaintiffs brought a Notice of Motion dated 31/3/2017 seeking the following orders;

**a) An order of eviction of Gichuru Kinuthia, Patterson Njoroge and John Ngethe Gichuru from Land Parcel Nos Dagoretti/Thogoto/1191 and Dagoretti/Thogoto/1191 be and is hereby issued.**

**b) The eviction of the said Gichuru Kinuthia, Petterson Njoroge and John Ngethe from land parcel Nos Dagoretti/Thogoto/1192 and Dagoretti/Thogoto/1192 be supervised by the Officer Commanding Station (O C S) Kikuyu Police Station.**

**c) Costs of this application be provided for.**

4. The application was served on the defendants' advocate based at Kituo Cha Sheria but no response has been raised against the application.

5. The court has considered the material application. The tenor and import of the application is that it seeks execution and enforcement of the judgment of the Court of Appeal. Execution/enforcement of judgments of the Court of Appeal is covered by the legal framework in **Section 4 of the Appellate Court Jurisdiction Act** which provides thus:

**Any judgment of the Court of Appeal given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.**

6. The "High Court" in the above legal framework is to be construed with the necessary alterations and adaptations to conform with the post 2010 architecture of Kenya's court system and within the constitutional framework in Section 33 of the Sixth Schedule of the Constitution

relating to succession of institutions. The successor court to the pre-2010 high court in relation to land disputes is the Environment and Land Court. The court is therefore satisfied that this court is the proper forum through which to enforce the judgment of the Court of Appeal.

7. As noted in the preceding paragraphs, the decree holder's application is unopposed. Consequently, in the absence of any opposition from the defendants, the plaintiffs' application dated 31/3/2017 seeking execution/ enforcement of the judgment of the Court of Appeal dated 30/10/2015 is allowed in the following terms:

**(a) The Police Officer Commanding Kikuyu Police Station shall oversee the plaintiffs' enforcement of the Court of Appeal Judgment dated 30/10/2015 and the formal extracted order issued on 16/3/2017.**

**(b) The Environment and Land Court Registry shall issue formal warrants of execution to appropriate licensed officers of the Court and to the Officer Commanding Kikuyu Police Station authorizing them to execute and/or enforce the judgment/order of the Court of Appeal as ordered by the Court of Appeal.**

**(c) Execution shall be carried out in strict compliance with the law.**

**(d) The defendants shall bear costs of this application.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18<sup>TH</sup> DAY OF MAY 2018.**

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**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Kinyua holding brief for Mr Ndumu Kimani Advocate for the Plaintiff

No appearance for the Defendant

Ms. Kajuju - Court clerk