



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO. 41 OF 2016

KIBUTUK ARAP TOO.....PLAINTIFF

VERSUS

PERIS SHANYASI.....1ST DEFENDANT

JOYCE KABURANI.....2ND DEFENDANT

JAPHET LUGAFA SHIKONYORE.....3RD DEFENDANT

LEAH MUSIMBI.....4TH DEFENDANT

LENA SOKONI.....5TH DEFENDANT

RULING

This ruling is in respect of an application dated 5th March 2018 brought by way of notice of motion by the plaintiff /applicant seeking for orders:

1. Spent.

2. That the defendant/respondents jointly and severally be evicted from the suit parcels of land known as NANDI/KAPKANGANI/1439 and 2211 as per the judgment and decree of the court.

3. That the OCS Kaimosi Police Station to effect the same.

Counsel for the plaintiff/applicant submitted that the court delivered a judgment in this case on 31/10/17 whereby the court gave the defendants 60 days within which to vacate the suit land failure of which an eviction order to issue. Counsel stated that a decree was extracted and served upon the defendants on 22/1/18 informing them to vacate but they have disobeyed the court order.

Mr Murgor further submitted that the defendants are impeding the plaintiff's enjoyment of the fruits of his judgment and that the plaintiff has been evicted from his previous place of residence. He also submitted that the plaintiff is now living in make shift structures and tents as per the photos annexed. Counsel also stated that the plaintiff is a senior citizen of 95 years and that the hazardous living conditions is taking a toll on his health.

Mr. Murgor submitted that the replying affidavit by one Peris alleges that she has filed an appeal of which she has not stated the No. of the appeal. He also stated that there was no stay of execution applied for or granted by the court and therefore nothing can stop the order from being granted. He therefore urged the court to allow the application as prayed.

Analysis and Determination

This court delivered a judgment on 31st October 2017 in favour of the plaintiff. The defendants were given 60 days from the date of the judgment to vacate the suit land failure of which an eviction order was to issue. The plaintiff extracted the decree and served the defendants with it on 22nd January 2018 but the defendants did not vacate as per the decree. The plaintiff has now come to court to seek for eviction orders as per the decree of the court.

The application is not opposed even though one of the defendants filed a replying affidavit alleging that they have filed an Appeal but no number was stated or a copy of the appeal documents to establish the same. It should also be noted that no application for stay of execution of the judgment and decree was filed. Therefore there is no bar to the applicant to execute the decree of eviction of the defendants.

I find that the application has merit and the plaintiff applicant should be allowed to enjoy the fruits of his judgment. The upshot is that the application for eviction is allowed as prayed but the eviction should be carried out in a humanely way with the assistance of the OCS Kaimosi Police station during the day.

Dated and delivered at Eldoret this 11th day of July, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of Mr. Choge for Defendant/Respondents and in the absence of Mr. Murgor for the Plaintiff/Applicant.

Mr. Koech - Court Assistant.