



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 235 OF 2017

JOSEPH NYAKUNDI ORINA.....PLAINTIFF

VERSUS

JOSEPH AMBUKA.....DEFENDANT

RULING

(Application for eviction; respondent not entering appearance; applicant succeeding in his suit for vacant possession; applicant ordered to serve a 30 days notice to the respondent before eviction; no proof of service of the 30 days notice; application dismissed but with liberty to file a fresh one upon service of the judgment and/or decree as ordered).

1. The application before me is that dated 11 July 2018 filed by the plaintiff. It is an application seeking orders to have an eviction order issued against the defendant and the Officer Commanding Bondeni Police Station (OCS, Bondeni) to provide security during the eviction exercise.

2. In this suit, the plaintiff/applicant sued the defendant/respondent for recovery of possession of land described as Nakuru Municipality Block 13L (Bondeni). The respondent did not file any appearance nor defence and the matter proceeded ex-parte. I gave judgment in favour of the applicant on 16 May 2018. Inter alia, I issued a declaration that it is the applicant who is the rightful proprietor of the suit land, and gave the respondent 30 days to vacate the suit land and in default an order of eviction be issued and be executed.

3. In this application, the applicant has deposed that the respondent has refused to vacate the suit premises despite the judgment against him.

4. The application is not opposed. However, I have absolutely no evidence before me that the respondent was served with the judgment and/or decree as I had directed in the judgment, and no evidence that 30 days have lapsed from the time that the judgment/decree was served, to the time that this application was filed. There is no affidavit of service of the judgment and/or decree upon the respondent annexed to the application, and my perusal of the file has revealed none. I regret my inability to issue an order of eviction before I have seen proof of service of the judgment and/or decree as stated in the judgment.

5. Apart from my direct order requiring service of the judgment or decree within 30 days, the applicant cannot execute without first complying with the provisions of Order 22 Rule 6 which requires that where judgment in default has been entered, no execution should issue until at least a 10 days notice is served upon the defendant.

6. It is for the reason that I have no proof of service of the judgment, and no evidence that 30 days have lapsed from the time of service of the said judgment and/or decree, that I have little choice but to dismiss this application. The applicant is of course at liberty to file another application once the judgment and/or decree is served in accordance with the judgment.

7. I make no orders as to costs.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Chelangat holding brief for Mr. Matiri for the plaintiff/applicant.

Defendant/respondent- Absent.

Court Assistant: Nelima

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU