



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL SUIT NO 297 OF 2000

JULIUS C BIEGON.....PLAINTIFF

VERSUS

JEREMIAH K. SIGIRA.....DEFENDANT

RULING

(Application seeking execution of a judgment; judgement entered for the plaintiff in respect of land occupied by defendant; application to execute allowed.)

1. The application before me is that dated 9 January 2018 filed by the plaintiff. The application is said to have been brought pursuant to the provisions of Order 9 Rule 8, and Order 22 Rule 29 (1) of the Civil Procedure Rules, and seeks the following orders :-

i. That the firm of M/s Kipkorir Tele & Kitur Advocates be granted leave to come on record for and on behalf of the plaintiff in place of M/s Kiplenge & Kurgat Advocates.

ii. That this Honourable Court be pleased to grant an order directing the District Surveyor, Kuresoi South to survey and demarcate the suit property LR No Molo South/Kapsembeiwo Block 3/400 (Chebara B) in line with the judgment and decree herein dated 31 March 2017.

iii. That the Officer Commanding Station (OCS) Keringet Police Station be directed to provide security during the survey and demarcation.

2. There is no response to the application.

3. By way of background, the plaintiff commenced this suit on 5 July 2000. He averred that he is the owner of the land parcel Molo South/Kapsembeiwo Block 3/400 (Chebara B) (parcel No. 400 measuring 22.9 Ha)and contended that the defendant had trespassed into two hectares of the same, and converted it into his (defendant's) land parcel Molo South/Kapsembeiwo Block 3/401 (Chebara B) (parcel No. 401, measuring 9.498 Ha). In the suit, he asked for orders that it be declared that the defendant has illegally excised 2 Ha, of the plaintiff's land; eviction, and general damages for trespass and mesne profits. The defendant filed defence, vide which he contended that he fenced his land as allotted to him by Chebara Farmers Company Limited.

4. In the course of the suit, the plaintiff filed an application seeking orders to have the District Land Registrar, visit the parcels of land and determine the acreage. The District Land Registrar visited the ground accompanied by the District Land Surveyor, and returned a report that the land of the defendant on the ground measures approximately 11.007 Ha. Thereafter, the matter proceeded for hearing before my brother, Hon. Justice Y. M. Angima, who had visited this station, in order to assist in the clearance of old cases. The plaintiff testified but the defendant did not show up at the hearing despite being duly served. Among the exhibits produced, was a report indicating that the plaintiff's land on the ground measures 20 Ha. Upon hearing the matter, the court made the following orders :-

(a) A declaration be and is hereby issued that the defendant illegally excised 2 hectares of the plaintiff's land namely Molo South/Kapsembeiwo Block 3/400 (Chebara B)

(b) An eviction order be issued against the defendant in respect of the 2 hectares.

(c) The plaintiff is awarded general damages for trespass to land in the sum of Kshs. 1,000,000/= against the defendant.

(d) The defendant shall pay the plaintiff's costs of the suit and interest thereon.

5. It will therefore be seen that there is judgment for the plaintiff against the defendant in respect of 2 hectares of land.

6. Given this position, I have no reason not to allow this application. The plaintiff will not be able to enjoy the fruits of his judgment unless the decree is executed by the District Land Registrar and District Land Surveyor, visiting the land and pointing out the actual 2 hectares that the defendant has hived off the plaintiff's land.

7. I also see no problem with allowing the prayer vide which the plaintiff seeks leave to appoint a new counsel to act for him in the matter.

8. I therefore make the following orders :-

i. The court allows the appointment by the plaintiff of the law firm of M/s Kipkorir Tele & Kitur Advocates in place of the law firm of M/s Kiplenge & Kurgat advocates and henceforth the law firm of M/s Kipkorir Tele & Kitur Advocates be deemed to be on record for the plaintiff.

ii. The District Land Registrar and the District Land Surveyor, Nakuru, are hereby ordered to proceed to the land parcels Molo South/Kapsembeiwo Block 3/400 and 401 (Chebara B) and take measurements on the ground and identify the 2 hectares occupied by the defendant purporting the same to be part of the land parcel No. 401, but which 2 hectares form part of the land parcel No. 400.

iii. That upon this portion of 2 hectares being identified the defendant to vacate the said portion of 2 hectares forthwith and hand over possession to the plaintiff, and in default the defendant be forcefully evicted with assistance of the OCS Keringet Police Station and the plaintiff be put into possession.

iv. That the defendant shall bear the costs of this application and all costs that may be incurred in executing this order.

9. It is so ordered.

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 : -

No appearance for the applicant.

No appearance for the respondent.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU