



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

CIVIL SUIT NO.13 OF 2011

KIPROTICH ARAP CHEPKWONY.....PLAINTIFF

VERSUS

SIMON LANGAT.....1ST DEFENDANT

SAMSON MULOTI.....2ND DEFENDANT

DAVID NGENO.....3RD DEFENDANT

CHUMEK ARAP KETER.....4TH DEFENDANT

RULING

Introduction

1. The Plaintiff/ Applicant moved the Court by way of a Notice of Motion Application dated 7th June 2018 brought under sections Order 49 Rules 3 and 7(x) and Order 22 rule 29 of the Civil Procedure Rules seeking the following prayers:

i) Spent

ii) That an eviction order do issue against the Respondents herein who were held to have no recognizable interest in that property known as L.R Number TRANSMARA/OLOSAKWANA "B" /29 pursuant to the Judgment and decree of this Honourable Court dated 3rd February 2017.

iii) That an order do issue that RONBOY Auctioneers of P.O Box 52 LITEIN be appointed to evict the Respondents, Simon Langat Samson Moloti David Ngeno and Chumek Arap Keter, from L.R No. TRANSMARA/OLOSAKWANA "B" /29.

iv) That an order do issue directing the Officer Commanding Police Station (OCS) Emuruo Diker Police Station to provide security during the eviction exercise against the Respondents.

v) That the costs of this application and the eviction exercise be borne by the Respondents.

2. The application is predicated on the following grounds:

a) That the Respondents were ordered to vacate the suit land within 30 days from 3rd February 2017.

b) That the Respondents have refused to vacate the suit land as ordered.

c) The Defendants/Respondents have threatened violence and resistance against eviction.

d) The Plaintiff/Applicant has reasonable cause to believe that the auctioneer who is licensed to carry out eviction may be subjected to resistance and intimidation by the Defendants or their agents before, during and as a result of the eviction.

e) The security agents are swilling to provide security as long on condition that there is a specific order to that effect.

3. The Application is supported by the applicant's affidavit sworn on the 7th June 2018 in which he restates the above-mentioned grounds.

4. Despite being granted time to file their Replying affidavit, the Defendants have not done so and the application is therefore unopposed.

Issues for determination

5. There are only two issues for determination:

- i. Whether the Respondents were ordered to vacate the suit property pursuant to the Court’s Judgment dated 3rd February 2017.
- ii. Whether an eviction order ought to issue against the Respondents.

Analysis and determination

6. It is abundantly clear from the proceedings and Judgment of this Honourable Court dated 3rd February 2017 which I have had occasion to peruse that the Respondents were ordered to vacate the suit property within a period of 30 days from the date of the said judgment. Despite the said Judgment the Respondents, have not vacated the suit land. This Honourable Court’s orders must be obeyed and where it is shown that parties against whom orders are made continue to treat the same with impunity, the court will not hesitate to take remedial action. It is therefore my finding that the Respondents are entitled to an eviction order.

7. Accordingly, the applicant’s application succeeds and I make the following orders:

- a) An eviction order is hereby issued against the Respondents herein evicting them from that property known as TRANSMARA/OLOSAKWANA “B” /29 pursuant to the Judgment and decree of this Honourable Court dated 26th June 2015 and issued on 16th July 2015.
- b) RONBOY Auctioneers of P.O Box 52 LITEIN are hereby appointed to evict the Respondents from L.R No. TRANSMARA/OLOSAKWANA “B” /29.
- c) The Officer Commanding Police Station (OCS) Emuruo Diker Police Station is directed to provide security during the eviction exercise against the Respondents.
- d) The Respondents shall bear the costs of the eviction exercise and of this application.

Dated, signed and delivered at Kericho this 10th day of September, 2018.

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J. M ONYANGO

JUDGE

In the presence of:

- 1. Mr. Nyadimo for Mr. Onesmus Langat for the Plaintiff
- 2. N/A for the Defendants
- 3. Court assistant - Rotich