



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**HCC No. 253 OF 2005**

**DAVID SIRONGA OLE TUKAI.....PLAINTIFF**

**VERSUS**

**FRANCIS ARAP MUGE,**

**SAMUEL KIPROTICH ARAP KIRUI,**

**JOHANNAH KIPRONO ARAP MOSONIK**

**(Sued as the Chairman, Secretary and Treasure respectively of**

**KAPKWEEN FARMERS CO-OPERATIVE SOCIETY LTD).....DEFENDANTS**

**RULING**

1. This is a ruling in respect of Notice of Motion dated 8<sup>th</sup> February 2018, filed by the plaintiff. The application is brought under Sections 1A, 1B and 3A of the Civil Procedure Act. The following Orders are sought:

***a) That an eviction Order be issued to Jeremiah K. Muchendu t/a Icon Auctioneers, Tembo Co-operative House, Moi Avenue, 3<sup>rd</sup> Floor, Room No. 7, P. O Box 40781 – 00100 Nairobi, Cell phone: 0720432189 directing him to evict and remove all the defendants, their agents, their servants and all the members of Kapkween Farmers Co-operative Society Limited together with all their structures, houses and other buildings from the plaintiff's parcel of land known as Narok/Cis Mara/Ololulunga/161 until vacant possession thereof is handed over to the plaintiff. The Officer Commanding Narok County Police be ordered to supervise the eviction exercise and to provide the necessary security to the said auctioneers to ensure that the eviction exercise is carried out peacefully and completely.***

***b) That the costs of this application and the auctioneers' costs and the eviction expenses be borne by the defendants.***

2. It was initially indicated in the application that the eviction be carried out by Henry K. Nzyoku t/a Icon Auctioneers but this was later amended to read Jeremiah K. Muchendu t/a Icon Auctioneers.

3. The application is supported by an affidavit sworn by the plaintiff. He deposed that following a judgment delivered by the Court of Appeal on 18th December 2014, he is entitled to vacant possession as per the decree issued by the court on 18<sup>th</sup> December 2014.

4. Though served, the defendant did not oppose the application. Counsel for the plaintiff therefore urged the court to allow the application.

5. I have considered the application, the supporting affidavit and counsel's submissions.

6. The record herein shows that through plaint dated 12<sup>th</sup> October 2005, the plaintiff sought judgment against the defendant for:

***a) An eviction Order be issued so that the defendants by themselves, their agents, their servants and all the members of Kapkween Farmers Co-operative Society Limited are removed from the plaintiff's parcel of land known as Narok/Cis Mara/Ololulunga/161 which measures 150.5 hectares (Approx.371.89 acres) as described in the Land Registry Map Sheet No. 132/111, 146/1 and 131/IV so that vacant possession thereof can be delivered to the plaintiff.***

***b) A permanent injunction be issued restraining the defendants by themselves, their agent, their servants and all the members of Kapkween Farmers Co-operative Society Limited from entering, remaining onto, trespassing on dealing with or in any manner howsoever from interfering with the plaintiff's quiet, peaceful and exclusive possession and occupation of land parcel No. Narok/Cis/Mara/Ololulunga/161 measuring 150.5 hectares (approximately 371/89 acres).***

***c) Costs of this suit.***

7. The record herein shows that indeed through judgment delivered on 18<sup>th</sup> December 2014, the Court of Appeal in **Civil Appeal No. 76 of 2014 (Nairobi) David Sironga Ole Tukai v Francis Arap Muge & 2 Others** allowed the appeal, set aside the judgment delivered herein by Emukule J. on 7<sup>th</sup> June 2013 and replaced it with an order allowing the plaintiff's suit with costs. Following the said judgment of the Court of Appeal, this court issued a decree on 18<sup>th</sup> December 2014.

8. In view of the foregoing and there being no opposition to the application, I see no reason why the orders sought should not be issued but in terms of the judgment rendered by the Court of Appeal.

9. For good order, it is crucially important that the eviction be in strict compliance with the judgment of the Court of Appeal, as delivered on 18<sup>th</sup> December 2014. Further, I consider that it is prudent to give the defendants a chance to vacate on their own volition failing which an eviction should ensue. This is also in line with the provisions of **Order 22 rule 18** of the **Civil Procedure Rules** which contemplates that there should always be notice to the judgment debtor when an application for execution is made than one year after the date of the decree.

10. I therefore make the following orders:

a) The defendants to vacate from the parcel of land known as Narok/Cis Mara/Ololulunga/161 which measures 150.5 hectares (Approx.371.89 acres) as described in the Land Registry Map Sheet No. 132/111, 146/1 and 131/IV in terms of the decree issued herein within 30 (thirty) days of service upon them of these orders. In default, the defendants be evicted in the manner stipulated below.

b) An eviction order be issued to Jeremiah K. Muchendu t/a Icon Auctioneers, Tembo Co-Operative House, Moi Avenue, 3<sup>rd</sup> Floor, Room No. 7, P. O Box 40781 – 00100 Nairobi, Cell phone: 0720432189 directing him to evict the defendants, their agents, their servants and all the members of Kapkween Farmers Co-operative Society Limited from the plaintiff's parcel of land known as Narok/Cis Mara/Ololulunga/161 which measures 150.5 hectares (Approx.371.89 acres) as described in the Land Registry Map Sheet No. 132/111, 146/1 and 131/IV so that vacant possession thereof can be delivered to the plaintiff.

c) The eviction to be done in accordance with the provisions of section 152G (1) (a), (d) to (i) of the Land Act, 2012.

d) The Officer Commanding Narok County Police to provide security during the eviction exercise.

e) Costs of the application, the auctioneer's costs and costs of the eviction be borne by the defendants.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 12<sup>th</sup> day of October 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Karanja for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Gichaba & Lotkomo