



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 36 OF 2016

LUCY WANJIRU KIBUSU

(Suing as the administrator of the Estate of JOYCE WANGARI KIBISU).....**PLAINTIFF**

VERSUS

CHARLES MIYENDA CHORE.....DEFENDANT

RULING

(Application for eviction; judgment making specific order for service upon the defendant before an eviction could issue; no proof of service of the judgment; application dismissed).

1. The application before me is that dated 19 September 2018 filed by the plaintiff/decree holder. It is an application brought pursuant to the provisions of Order 22 Rule 29 (1) and 82(1) of the Civil Procedure Rules, and seeks orders to have the Officer Commanding Station, Naishi Police Station, to provide security during the eviction of the judgment debtor from the land Plot No. 239 Nguriga Trading Centre, Njoro.

2. In this suit, the plaintiff sued the defendant for occupying the subject plot. The defendant appointed an advocate who entered appearance and filed defence. However, he and his counsel did not appear at the hearing of the suit and the matter proceeded in their absence. I was persuaded that the plaintiff has proved her case and entered judgment in her favour on 16 November 2017. In my judgment I held that as between the plaintiff and defendant, it is the plaintiff who is entitled to ownership of the subject plot. I declared that the defendant is a trespasser and gave an order that he must vacate within 14 days of service of the judgment and/or decree and if he fails to so vacate, an eviction order to issue.

3. In this application, the applicant has averred that the defendant has failed to vacate the suit plot. That may be so, but in my judgment, I did direct that the defendant be served with the judgment and/or decree before an order of his eviction may be executed. I have not seen any proof of service of the judgment and/or decree upon the defendant. I therefore hesitate to issue the eviction orders sought herein. I instead direct the applicant to first proceed to serve the judgment and/or decree personally upon the defendant, after which the applicant is at liberty to file an application for eviction for consideration.

4. It is solely for the reason that I have no proof of service of the judgment and/or decree upon the defendant as ordered in the judgment, that I dismiss this application. I however make no orders as to costs.

5. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Ogame holding brief for Mr. Kamonjo Kiburi for the applicant.

No appearance on the part of M/s Osero & Co. for the respondent.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU