

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 49 OF 2018

ENOS MATANGWE SIKOYO.....PLAINTIFF/APPLICANT

VERSUS

ISMAEL SAKWA.....DEFENDANT/RESPONDENT

RULING

This application is dated 30th December 2017 and is brought under order 22 rule 29 of the Civil Procedure Rules and seeks the following orders:-

(a) The honourable court be pleased to issue an eviction order for the forceful ejection of the defendant, his relatives, servants, agents, employees and or anybody claiming through him from the suit parcel of land NO. E. WANGA/MUNG'ANG'A/1144 forthwith.

(b) The officer-in-charge, Shianda Police Station be ordered to effect the eviction order aforesaid.

(c) Costs of this application be borne by the defendant/respondent.

It is based on the annexed affidavit of Enos Matangwe Sikoyo, plaintiff/applicant and on the following grounds that, vide a judgment delivered on 12th November, 2009 and a decree extracted herein on 14th December, 2009 this honourable court issued an order for the eviction of the defendant, his relatives, servants and or agents from the plaintiff/applicant's land parcel NO. E/WANGA/MUNG'ANG'A/1144 which decree remains in force to-date. That the defendant/respondent and his relatives, servants and or agents have refused to vacate the suit land thereby necessitating their ejection therefrom. That it is imperative and necessary that the orders sought herein be granted in order to bring this litigation to an end and to enable the plaintiff/decree-holder enjoy the fruits of his success in litigation.

The respondent submitted that, the said application is wanting as a party can take a grace of approximately ten (10) years to execute his/her decree. That the purported decree has never been extracted and served upon him as required. That he bought the suit land from Noah Shitabule Bushuru in the year 2000 and he has been peacefully, openly without any interruption from the applicant in occupation and extensively developed the same. That the purchase of land happened after he confirmed that the land belonged to Noah Shitabule Bushuru as a co-owner from the land registry on 26/10/2000. That the applicant demand amounts to fraud as he encroached and trespassed on the land and interfered with the boundary features. That the applicant does not warrant the orders sought as no sufficient grounds have been tendered to that effect and stand not to suffer any loss should his two (2) acres be curved out from the suit land which about 3 acres.

This court has carefully considered the application and the submissions herein. On perusal of the court file I find that the matter was heard and determined and a judgment delivered on 12th November, 2009 and a decree extracted herein on 14th December, 2009 this court issued an order for the eviction of the defendant, his relatives, servants and or agents from the plaintiff/applicant's land parcel NO. E/WANGA/MUNG'ANG'A/1144 which decree remains in force to-date. The respondent in his replying affidavit is trying to reopen the case on why he should not be evicted. However, he never filed any appeal against the said judgement and the same still stands. I find this application has merit and I grant the same as prayed.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY NOVEMBER, 2018.

N.A. MATHEKA

JUDGE