



**Muia v Ndetei & another (Environment & Land Case 98 of 2017)
[2024] KEELC 521 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 98 OF 2017
TW MURIGI, J
JANUARY 24, 2024**

BETWEEN

ALOIS MUIA PLAINTIFF

AND

EDWARD MUTINDA NDETEI RESPONDENT

AND

COUNTY GOVERNMENT OF MAKUENI DEFENDANT

RULING

1. This ruling is with respect of the Notice of Motion dated July 24, 2023 brought under Sections 1A, 1B, 3A, 38 (a) and 51 of the *Civil Procedure Act* in addition to Order 22 Rules 29, 82 and Order 51 Rules 1, 3, 4 of the *Civil Procedure Rules* in which the Applicant seeks the following orders: -
 1. Spent.
 2. That the Honourable Court do direct the Officer commanding Emali Police Station towards enforcing the Judgment of the Honourable Court made on December 28, 2018 to provide security and supervision to the Applicant, his agents and/or servants to evict anyone found to have trespassed into the Plaintiff's property and demolition of any structures erected on land Title No. Emali Township Block 1/198.
 3. That the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Alois Muia sworn on even date.



The Applicant's Case

3. The Applicant averred that the judgment herein was delivered on December 28, 2018 by Hon Justice Mbogo C.G in his favour. That being aggrieved by the decision, the 1st Respondent appealed against the judgment to the Court of Appeal in Nairobi Civil Appeal No. 123 of 2019. He went on to state that the Appeal was eventually dismissed by the Court of Appeal in its judgment delivered on July 7, 2023
4. According to the Applicant, an express order directed to the Officer Commanding Station Emali Police Station to provide security and supervision is necessary to enable him to enforce the said judgment. The Applicant contended that unless the orders sought herein are granted, he will be deprived of the fruits of his judgment,
5. Although Service of the application was effected upon the Respondent on 03/08/2023 and an affidavit of service duly filed on 07/09/2023, the 1st Respondent did not file any response to the application.
6. Counsel for the Applicant opted to rely on the application as filed without filing submissions in support thereof.

Analysis And Determination

7. Having considered the application and the affidavit in support thereof, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
8. The record shows that judgment herein was delivered on December 28, 2018 in the following terms:-
 - a. A permanent order of injunction to restrain the Defendants jointly and/or severally, their servants, workmen, agents and/or anyone else claiming under them from entering on, erecting or causing to be erected thereon any structures, alienating, trading on or from in any way interfering with the Plaintiff's use and enjoyment of land Title No. Emali Township Block 1/198.
 - b. A declaration that the Plaintiff is the absolute and indefeasible registered proprietor of land Title No. Emali Township Block 1/198 to the exclusion of anyone else.
 - c. An order of eviction of anyone found to have trespassed onto the Plaintiff's property and demolition of any structures erected on the said land Title No. Emali Township Block 1/198 as provided for under Section 152 E of the [Land Act](#).
 - d. Kshs. 200,000/= being general damages.
 - e. Interest thereon.
 - f. Costs of the suit.
9. The 1st Respondent appealed against the decision to the Court of Appeal in Civil Appeal Case No. 123 of 2019. The Appeal was dismissed Vide the judgment delivered on July 7, 2023. While upholding the judgment and decree issued by this Court, the Court of Appeal found that in the face of the Certificate of lease held by the Applicant, the Respondent has no right to the suit land at all.
10. The 1st Respondent's appeal against the judgment of this Court was extinguished by virtue of the judgment delivered on July 7, 2023 by the Court of Appeal. No appeal has been lodged against the said decision. There is already a judgment in favour of the Applicant. The Applicant already has an order of eviction against anyone found to have trespassed on his property and demolition of any structure



erected on the said property. The ordinary principle is that a successful party is entitled to the fruits of his judgment.

11. In the case of *Samvir Trustee Limited V Guardian Bank Limited* [2007] eKLR it was held that:-

“It is a fundamental factor to bear in mind that, a successful party is *prima facie* entitled to the fruits of his judgement, hence the consequence of a judgement is that it has defined the rights of a party with definitive conclusion. The respondent is asserting that matured right against the applicant/defendant.”

12. It is trite law that litigation must come to an end. In the present case, litigation ended the moment the Respondent failed to appeal against the decision of the Court of Appeal.

13. Consequently, I find that the application dated July 24, 2023 is merited and the same is allowed as prayed.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFTS TEAMS THIS 24TH DAY OF JANUARY, 2024.

HON. T. MURIGI

JUDGE

In the presence of:

Court Assistant Mr. Kwemboi.

Mbindyo for the Applicant.

