

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 552 OF 2008

MARK NJUGUNA MWAURA.....PLAINTIFF

VERSUS

JOHN OKUNDO KIRONZI t/a

BETHANY NURSERY SCHOOL..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 20th March 2015 in which the Plaintiff/Applicant seeks for an order of eviction to be issued against the Defendant/Respondent from the parcel of land identified as Dagoretti/Riruta/1173 (hereinafter referred to as the “suit property”) and that the costs of this Application be borne by the Defendant/Respondent.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Mark Njuguna Mwaura, sworn on 20th March 2015 in which he averred that on 28th October 2008, he filed this suit against the Defendant/Respondent seeking for an order that he be evicted out of the suit property. He averred further that on 30th January 2014, this court ordered the Defendant/Respondent to vacate the suit property within 90 days of service of the Decree. He annexed a copy of the Decree. He further averred that on 18th September 2014, the Defendant/Respondent was served through his son but the 90 days ordered by the court have expired yet the Defendant/Respondent has not vacated the suit property. He stated that it is only fair and just that the Defendant/Respondent should now be evicted out of the suit property.

The Application is unopposed.

The issue that I am called upon to determine is whether or not to issue an order of eviction against the Defendant/Respondent out of the suit property. This is a straightforward matter. I do confirm that a Decree was issued by this court on 13th May 2014 whereby it was ordered as follows:

“That the Defendant be and is hereby ordered to vacate the suit premises within 90 days from the date of being served with the Decree to afford the Defendant sufficient time to relocate the school and failing which an order against the Defendant to issue on application of the Plaintiff.”

According to the annexed Affidavit of Service, service of this Decree was effected upon the adult son of the Defendant on 18th November 2014. To date, the Defendant has failed to vacate the suit property hence this Application.

I consider that the Plaintiff is entitled to obtain vacant possession of the suit property and that the Defendant/Respondent should be forcefully evicted therefrom. In that regard, this Application is allowed with costs to the Plaintiff/Applicant.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 7TH DAY OF APRIL 2017.

MARY M. GITUMBI

JUDGE