

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

ELC CASE NO.106 OF 2011

SHADRACK ASAKANIA ONDIECHI.....PLAINTIFF / APPLICANT

-VERSUS -

JAMES CHENGUYI ALWA.....DEFENDANT/ RESPONDENT

RULING

The application is dated 22nd April 2015 and is brought by way of Notice of Motion under order 22 Rule 29 of the Civil Procedure Rules 2010. Applicant seeks the following orders;

1. That this Honourable Court be pleased to issue an eviction order for the forceful ejection of the defendant, his servants, employees, relatives, agents and or anybody claiming through him from the suit land parcel No. S. WANGA/SHIKALAME/1498 forthwith.
2. The OCS Mumias police station be ordered to effect the eviction order aforesaid.
3. The costs of this application be borne by the defendant/ judgment debtor/respondent.

The Applicant in the grounds and affidavit supporting the application submitted that he had filed this suit against the Respondent who had occupied the suit land No. S. WANGA/SHIKALAME/1498 seeking inter alia his eviction therefrom. That by consent between the parties judgment was entered on the 4th April 2013 in favour of the applicant. It was agreed that the respondent be given three months to vacate failure to which he was to be forcefully evicted. The applicant was to give the Respondent Kshs. 30,000/= on an ex gratia basis which he did. The Applicant produced the said decree and payment voucher as evidence of the same. To date the respondent has failed and or refused vacate the suit parcel of land.

The Respondent submitted that indeed that the said judgment was entered by consent and he was paid Kshs 30,000/=. That he has not vacated the land because the Applicant was to allocate him another parcel of land in Busia.

This court has carefully considered both the Applicant's and the Respondent's submissions. It is not disputed that judgment was entered by consent between the parties on the 4th November 2013 whereby it was agreed that the Respondent be given three months to vacate land parcel No. S. WANGA/SHIKALAME/1498 failure to which he was to be forcefully evicted. The applicant was to give the Respondent Kshs. 30,000/= on an ex gratia basis which he did. The Respondentsubmitted that he was to be given alternative land in Busia by the Applicant. I find that this was never captured in the consent judgment and hence is an afterthought on the part of the Respondent. The Respondent having entered into the consent judgment to vacate the said suit land way back in 2013 and even after receiving Kshs. 30,000/- from the Applicant now refuses to do so. The Respondent cannot have his cake and eat it.

For the reasons above the Notice of Motion dated 22nd April 2015 has merit and I grant it as prayed in the following terms. That the Respondent is given three months to vacate the suit premises failure to which he will be forcefully evicted in terms of prayer 2 and 3 of the application. Costs of this application to the Applicant.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 6TH APRIL, 2017.

N.A. MATHEKA

JUDGE