



**Kithamba v Mwongera (Environment and Land Appeal 139 of 2019)
[2024] KEELC 1114 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1114 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 139 OF 2019**

CK NZILI, J

FEBRUARY 28, 2024

BETWEEN

JULIUS KATHURIMA KITHAMBA APPELLANT

AND

JULIUS MWONGERA RESPONDENT

RULING

1. The court is asked to order the OCS Ruiru Police Station to provide security for the implementation of the decree issued on 7.12.2023, following a judgment delivered on 28.7.2021. The reasons are contained on the face of the application and an affidavit sworn on 1.9.2023 by Julius Kathurima Kithamba. Briefly, the applicant states the judgment debtor has declined to vacate the land despite intervention by the local area administration, hence depriving him of his rights.
2. The application is opposed by a replying affidavit sworn on 3.11.2023 by Julius Mwongera M'Inoti. He avers the applicant is his uncle, who initially exchanged the suit land with his family land's share L.R No. Nyaki/Mulathankari/494 and settled therein, but changed his mind and filed the suit.
3. Similarly, the respondent avers his sisters filed Meru H.C succession case No. 22 of 2000 and succeeded in having a share of 1/3 of L.R No. Nyaki/Mulathankari/494, to which the applicant is occupying, yet he now wants to evict him from the suit land without vacating the said share. He says survey works for L.R No. 494 were ongoing. He termed the application malicious.
4. The judgment and or decree delivered on 28.7.2021 by this court has not been appealed against or set aside. The respondent has been aware of the decree or order but has not complied with it. There is no evidence that the respondent was served with the statutory notice under Sections 152 A-F of the Land Act and has refused to comply. Nevertheless, the respondent has shown no justification why he has not handed over vacant possession.



5. Consequently, I order that the applicant serves the requisite notice and, upon its expiry, the O.C.S Ruiru to evict the respondent from the suit land in accordance with the law.
6. Costs to the eviction and this application, if he does not voluntarily vacate the land, shall be met by the respondent.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 28TH DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Gikunda Anampiu for applicant

Miss Kerubo for respondent

HON. CK NZILI

JUDGE

