



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 236 OF 2016**

**JOHN MAGETO NYACHIEO .....PLAINTIFF**

**VERSUS**

**JOHN KINYUA .....DEFENDANT**

**RULING**

***(An application seeking eviction orders judgment having already been delivered and eviction ordered in the judgment; the application held to be unnecessary; nevertheless, police assistance granted)***

1 Judgment was delivered herein on 27<sup>th</sup> July 2017 in favor of the plaintiff as follows:

**a) I declare that the plaintiff herein is the legal owner of the suit land herein known as Land reference Number Nakuru/Molo (Kapsita) 97.**

**b) The defendant, his agents or servants to vacate Land Reference Nakuru/Molo (Kapsita) 97 within 30 (thirty) days of service of these orders upon the defendant. In default, the defendant his agents or servants be evicted from Land Reference Nakuru/Molo (Kapsita) 97. The eviction to be in accordance with the provisions of section 152G of Land Act, 2012.**

**c) I grant a permanent injunction restraining the defendant herein, his agents or servants from invading or interfering with the plaintiff's quiet enjoyment of Land Reference Nakuru/Molo (Kapsita) 97.**

**d) The plaintiff is awarded costs of the suit.**

2. By Notice of Motion dated 13<sup>th</sup> September 2017, the plaintiff now seeks the following orders:

***a) THAT an order of eviction be issued against the Respondent/Defendant, servants and or agents from land parcel No. NAKURU/MOLO (KAPSITA) 97 measuring approximately 2.02 Hectares.***

***b) THAT a permanent injunction be issued against the Defendant/Respondent, his agents/servants from trespassing to land parcel No. NAKURU/MOLO (KAPSITA) 97 measuring approximately 2.02 Hectares.***

***c) THAT this order be enforced by Officer Commanding Station Molo Police Station thereto.***

***d) THAT costs of this application be awarded to the Applicant.***

3. The application is brought under Order 22 rule 29(1) of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act and Section 152(3) of Land Act 2012. The application is supported by the affidavit of the plaintiff sworn on 13<sup>th</sup> September 2017.

4. The plaintiff deposes that despite being served on 2<sup>nd</sup> August 2007 with a copy of the judgment delivered herein, the defendant has refused to vacate. That the defendant has never appealed against or sought setting aside of the judgment. The plaintiff thus prays for the orders sought.

5. When the application came up for inter parte hearing the court was satisfied that service of the application had been effected. There being neither appearance for the defendant nor any response to the application, the application proceeded unopposed. Counsel for the plaintiff urged the court to allow the application in terms of prayers (a), (c) and (d) thereof.

6. I have considered the application. Judgment delivered herein on 27<sup>th</sup> July 2017 has neither been challenged in any way nor set aside. In effect therefore the plaintiff already has an eviction Order in terms of paragraph 8(b) of the said judgment. There is evidence that the defendant was served with a copy of the judgment on 2<sup>nd</sup> August 2017 more than 30 days ago. Consequently, the defendant is now due for eviction in terms of paragraph 8(b) of the judgment. No new eviction Order is necessary.

7. The judgment was specific that eviction has to be in accordance with the provisions of Section 152G of the Land Act, 2012. In view of the terms of the judgment and the defendant having been duly notified of it, the authorization required for eviction under Section 152G has already been given. The application was thus not necessary.

8. Nevertheless, for whatever it is worth, the Officer Commanding Station, Molo Police Station is hereby ordered to provide security during the eviction. Eviction to be carried out by either the court bailiff or by an auctioneer duly issued with warrants to enforce the decree herein. No order as to costs.

9. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of December 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Ombati holding brief for Mr. Ogeto for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistant: Gichaba