



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CAUSE NO. 362 OF 2016

ROSAH JEPKOECH.....PLAINTIFF

VERSUS

KENNEDY ILAVUNA KAMUSHA.....1ST DEFENDANT

AGGREY SAKWA.....2ND DEFENDANT

RULING

This ruling is in respect of an application dated 24th October 2018 brought by way of a notice of motion by the Plaintiff/applicant for orders:

- 1) Spent.
- 2) That the court do issue an order directing the OCS Kabuji Police Station to assist in the forceful eviction of the judgment debtor/respondents herein from land parcel No Nandi/Kemeloi/1154.
- 3) That costs of this application be provided for.

On the hearing of the application Mr. Amasakha indicated to the court that he had just been instructed to act for the 1st defendant and that he intended to file an application for review of the orders of the court.

Miss Ashitsa for the plaintiff applicant opposed the application as Mr. Kagunza was on record for both the defendants and had filed grounds of opposition to the application. The court ordered that the matter proceeds.

Counsel for the plaintiff/applicant argued the application and urged the court to grant an order directing the OCS Kabuji Police station to assist with the eviction of the defendants herein. It was Counsel's submission that the defendant filed an application for stay of execution which was dismissed and that the time limit given to the defendants had lapsed.

Miss Ashista submitted that a party moving the court to enforce a judgment cannot be termed as frivolous or scandalous. That the respondents admitted to having been served with the decree which orders were legally granted by the court. Counsel therefore prayed that the application be allowed.

Mr. Kagunza opposed the application on grounds that the respondents were not personally served as required by law. It was his submission that the 1st respondent works in Nairobi and that there was no proper service. He urged the court to dismiss the application.

Analysis and determination

The plaintiff applicant obtained a judgment dated 14th December 2017 which gave the defendant 30 days within which to vacate failure in default of so vacating an eviction order to issue. The defendants filed an application for setting aside judgment which was dismissed as the defendants were properly served with summons to enter appearance.

The plaintiff is in order to ask for assistance in the enforcement of the decree. I find that the application dated 24th October 2018 has merit and is therefore allowed with costs to the applicant. The eviction to be done during the day and in a humanely manner.

Dated and delivered at Eldoret this 13th day of December, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of Mr. Kagunza for defendants and in the absence of Miss Ashitsa for the Plaintiff.

Mr. Koech: Court Assistant