



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 42 OF 2015**

**JESTIMORE SIMWENYI.....PLAINTIFF**

**VERSUS**

**SAMSON SICHANGI.....DEFENDANT**

**RULING**

The application herein is dated 6.3.2015 wherein the applicant seeks orders that the amended order of eviction issued on 23.7.2014 be reviewed or set aside and the entire execution process be terminated. The application is supported by affidavit of Boniface Wafula and is based on the grounds that the move to execute against the defendant and the objectors herein is time barred by statute and that 12 years have since lapsed after the delivery of judgment and therefore the attempt to execute the decree is statute barred and that the Objectors were not aware of these proceedings and yet they will be affected by the execution process.

The objectors further argue that judgment in this matter was entered on 14th March, 1997 and an order of eviction was issued on 6th April, 2001 and that 12 years have since expired. According to the objectors, the execution process offends the mandatory provisions of Section 4(4) of Limitation of Actions Act. That pursuant to Section 4(4) of the Limitation of Actions Act, judgment cease to be enforceable and no action whatsoever shall be taken after 12 years. That the plaintiff did not inform the court of the provisions of the Limitation of Actions Act and that no notice of entry of judgment was served on the Applicants.

In the supporting affidavit, Boniface Wafula states that he is the first objector/applicant herein and therefore competent and duly authorized to make and swear this affidavit in support of the application herein on his own behalf and on behalf of the co-applicant. They are residents on L.R. No. 5335/24 situated at Endebess in Trans-Nzoia County. He has been informed by the office of OCPD, Kwanza Sub-County that an order of eviction has been issued directing the removal of all persons resident on L.R. 5335/24. They have not been party to these proceedings and yet they stand to be evicted because the order is couched in such manner as to affect all persons residents of LR. No. 5335/24. That from the record, judgment in these proceedings was entered on 14th day of March, 1997 and an order of eviction was issued on 6th April, 2001 and since then, 12 years have since lapsed.

That he has been advised by the Advocate on record which advise he verily believes to be true that under the provisions of Limitations of Actions Act, Cap. 22 Section 4(4), the judgment herein is not enforceable as the same is now time-barred by statute. That the process of execution is therefore illegal and he prays for stay of execution. That it is trite law that a litigant cannot execute a judgment after the lapse of 12 years. On the 10.3.2015, the defendant/respondent filed a Notice of Preliminary Objection on grounds:

***(a) That the application is vexatious, frivolous and an abuse of court process and the same***

*should be dismissed with costs to the respondents.*

***(b) That the Objectors/Applicants have brought this application under the wrong provisions of the civil procedure rules.***

***(c) That the Objectors/Applicants have not followed the procedure envisaged under order 22 Rule 22, 51 and 52 of the Civil Procedure Rules (Objector's proceedings).***

***(d) That the matter is res judicata as the orders sought are similar to other related suits which have been heard and determined to wit Kitale Hcc E & L No. 139 of 2014, orders issued on the 4th day of February, 2015.***

***(e) That the objectors have no locus standi to see for the instant orders as they have not demonstrated any legal or equitable interest in the property subject matter (LR. NO. 5335/24) of the execution objected to.***

***(f) That the objectors/applicants are busy bodies who are seeking orders against deceased persons.***

***(g) That the execution process was legally issued and time has not expired as alleged.***

In the replying affidavit, Wilson Walunywa Simwenyi states that he is one of the legal representatives of the Estate of the late Jestimore Simwenyi and he has read and understood the purported objector's/applicant's application dated 6th March, 2015 and responds that the Objectors/Applicants have no legal or equitable interest on the subject property objected to as they have not exhibited any documentary evidence to show otherwise and that the Objectors/Applicants have therefore no *locus standi* to seek for orders of stay of eviction lawfully issued and never challenged since then. That the application is an abuse of court process as similar orders have been sought by other busy bodies and the same has been dismissed.

That the matter is *res-judicata* as the same issues have been ventilated and final orders issued in this cause and even Kitale H.CC E&L No. 139 of 2014. That he has been legally informed by his Advocate on record which information he verily believe to be true that the Objectors are using their weird gimmicks to deprive plaintiffs' legal representative from enjoying the fruits of the lawful judgment entered in their favours. That he is further legally advised that the objectors have used wrong procedures to obtain the *ex parte* orders as the provision of Order 22 Rule 22, 51 and 52 of the Civil Procedure Rules has not been properly complied with as required by law.

That he is also informed that under the objection proceedings, the party claiming to have a legal or equitable interest in the whole or part of the property attached in the execution of a decree may give notice in writing to the court and to all the parties of his objection to the attachment of such property. That the purported objectors are guilty of non-disclosure of material facts to this Honourable Court. That the Objectors are aware of the eviction orders issued herein and have never appealed against the same and therefore the instant prayers sought are not made in good faith and therefore the same is tainted with malice and malifides. That it is within his personal knowledge that the Samson Sichangi's sons, heir or agent are using hook and crook means to obstruct the due process of the court by using busy bodies like the objectors to the detriment of the Applicants herein. That he has further been informed that order 22, Rule 83 of Civil Procedure Rules if there is resistance or obstruction of the eviction orders, validly issued by this Honourable court and the same is being occasioned without any just cause then the objectors should be punished by this Honourable Court.

That in light of the foregoing, the orders issued should be set aside as it amounts to an abuse of court process. Litigation should come to an end. The applicant submits that the judgment was made on 14.3.1997 and an order of eviction issued on 6.4.2009 12 years after judgment contrary to Section 4 of the Limitation of Actions Act Cap. 22 Laws of Kenya.

In a nutshell the applicants **submit** that the amended eviction order dated 23.7.2014 is couched in a manner that affects each and every person who is resident on the land including public utilities whilst the respondent on his part, **submits** that the application is *res-judicata* as orders sought are similar to other related applications and suits which have been heard and determined. Mr. Rioba Omboto for the respondent contends that the process of execution is not time barred as the objectors were evicted in the year 2002 and 2005 and that computation of time starts from the date of the last eviction.

This court finds that on 14.3.1997, it was ordered that land parcel L. R. No. 5335/24 situated at Endebess area in Trans-Nzoia District legally and lawfully belongs to the plaintiffs namely; Richard Satia and Partners and Jestimore Simwenyi and that the defendant is a trespasser thereon and should give vacant possession thereon on to the plaintiff. The said defendant, his family and or agents failed, refused and/or ignored to give vacant possession of the said land parcel to the plaintiff.

On 6.4.2000, an application was made to the High Court and Hon. Lady Justice R. Nambuye gave an order that the defendant be evicted from the suit land by force.

The officer in charge, Endebess Police Station was directed to give the land in dispute to the plaintiff in vacant possession and was authorized to remove the defendant, his family, his servants and/or agents or any other person who may refuse to move therefrom using force as would be necessary to execute the order of transfer.

I have considered the application herein and do find that it lacks basis as the process of execution herein was commenced in the year 2001 by the plaintiffs by an application for execution of decree. The mode of execution was described as Notice to Show Cause why the defendant was not to be evicted.

The Notice to Show Cause was issued on 6.4.2001. The applicant's argument that the order of eviction was issued on 6.4.2009 is not true as the order of eviction was issued on 6.4.2001 and therefore time started running on the date of judgment and stopped running when the application for execution was made in the year 1999.

I agree with the arguments by the plaintiffs' counsel that the application is *res-judicata* as on the 4.2.2015, I held that the eviction orders were obtained way back in 2002 and that the dispute has been finally heard and determined.

The application is otherwise an abuse of the court process as the applicants are relatives of Samson Sichangi who was the defendant in this matter and who was ordered to be evicted with his family. The upshot of the above is that the application is dismissed with costs.

**DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF JANUARY, 2016.**

**ANTONY OMBWAYO**

**JUDGE**