



REPUBLIC OF KENYA



KENYA LAW
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**Lang'at v Watindi & 2 others (Civil Suit 176 of 2017)
[2024] KEELC 888 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 888 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
CIVIL SUIT 176 OF 2017
EO OBAGA, J
FEBRUARY 22, 2024**

BETWEEN

RODAH CHEPTONUI LANG'AT PLAINTIFF

AND

REV AGGREY WATINDI 1ST DEFENDANT

LOGOS REVIVAL MINISTRIES 2ND DEFENDANT

PRINCEDOM EDUCATION CENTRE 3RD DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 11th August, 2021 in which the Applicants seeks the following orders:-
 1. Spent
 2. Pending the hearing and determination of this application there be an order staying execution of the eviction order/decre.
 3. The property on which the decree is to be enforced land reference Eldoret Municipality Block 12/288 be identified by the county surveyor Uasin Gishu before the decree is enforced.
 4. Costs of the application be borne by the plaintiff/decre holder.
2. The Applicants contend that the Respondent wants to execute the decree in this matter by evicting the Applicants from LR. No. Eldoret municipality Block 12/337 instead of Eldoret municipality Block 12/288. The Applicants state that their lawyer has written to the auctioneer who is to carry out the eviction as well as the OCS Langas Police station to stop executing the decree on a wrong parcel but that they are adamant.



3. They state that it is important to go to the ground and ascertain the proper parcel on which execution is to be carried out.
4. The Applicants' application was opposed based on a replying affidavit sworn on 11th October, 2023. The Respondent avers that the applicants have trespassed on to the suit property known as Eldoret Municipality Block 12/288 and erected thereon a church and a semi-permanent school.
5. The Respondent states that the court has already found that Eldoret Municipality Block 12/288 belongs to the Respondent's late mother and that the Applicants failed to prove that Eldoret Municipality Block 12/337 exists. The Respondent states that the Director Land Administration has confirmed that there was double allocation as Eldoret Municipality Block 12/337 falls on the same ground as Eldoret Municipality Block 12/288.
6. In a supplementary affidavit sworn on 20th November 2023, the Applicants fault the letter of the Director Land Administration dated 17th September, 2021 terming it as not genuine and that they have confirmed from the Director of survey that Eldoret Municipality Block 12/288 and Eldoret Municipality Block 12/337 are distinct plots which are far apart. The Applicants also annexed two registry index maps in respect of the two parcels.
7. In a supplementary affidavit sworn on 19th December, 2023, the Respondent contends that the issue of the existence of plot No. 288 and 337 was settled in the judgement of 29th May, 2029. There was a Registry Index map which was produced by the Respondent and there was no objection to it. The Respondent states that no new evidence can be produced at execution stage and that the Director of surveys cannot purport to overturn a judgement of the court.
8. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether there is need for a surveyor to go to the ground to ascertain the plot on which execution is to be carried out.
9. I have perused through the court file as well as the judgment which was delivered on 29.5.2019. The judgment of the court was very clear that the Applicants were on Eldoret Municipality Block 12/288 and that they were supposed to be evicted from there. This judgement was never appealed against. The Judge made a finding that the Applicants had not proved that Eldoret Municipality Block 12/288 was distinct from Eldoret Municipality Block 12/337. The judge went on to state that the Applicant had not proved that Eldoret Municipality Block 12/337 existed or that they were on it.
10. The Applicant had tried to assert that they had acquired the suit property through adverse possession. One wonders how someone can assert adverse possession on his own property. The county surveyor had gone to the ground and carried out a survey on the two properties. He prepared a report but for reasons known to the parties, this report was never produced in evidence. The Applicants cannot again seek to have the property identified when the judgement of the court was clear that the Applicants are on Eldoret Municipality Block 12/288.
11. The Judge at page 7 of the judgement had this to say.

“The Plaintiff went beyond the instrument and proved the legality of how the title was acquired. The defendants have neither provided proof that they have title to the suit land nor any proof that the land which they occupy is distinct or that it is Eldoret Municipality Block 12/337”



12. The Judgment went on to state on page 7 as follows:-

“The defendants have not provided any proof that the land they occupy is indeed Block 12/337. They have also not tabled any evidence to prove that the two parcels are distinct or whether Block 12/337 even exists.”

13. At page 7 to 8, the judge went on to state as follows:-

“The defendants only provided a sale agreement as proof of their ownership of Eldoret Municipality Block 12/337. How is the court to determine that the parcel exists based on an agreement? Further, the vendor in the sale agreement wrote a letter to the plaintiff clarifying that the allocation was erroneous and that the defendants do indeed occupy the Plaintiff’s land. I find that the defendants have failed to prove that they are in occupation of Block 12/337.”

14. It is therefore clear that the Applicants are trying to prolong their occupation of Eldoret Municipality Block 12/288 from where they were ordered to vacate. I therefore find that the Applicants’ application is devoid of merit. The same is dismissed with costs to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 22ND DAY OF FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Wainaina for Mr. Momanyi for Applicants.

Court Assistant –Laban

E. O. OBAGA

JUDGE

22nd FEBRUARY, 2023

