



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO 36 of 2010

AUGUSTINE KIPKOECH CHERUIYOT.....1ST APPLICANT

PAUL KIPKEMEI ARAP TUE.....2ND APPLICANT

VERSUS

HARON OCHANDA KABORI.....RESPONDENT

RULING

(Application for eviction; plaintiffs filing suit for adverse possession which they lost; defendant now seeking eviction of the 2nd plaintiff; application allowed; order for eviction to issue)

1. The application before me is that dated 10 September 2015 filed by the defendants. It seeks orders to have the 2nd plaintiff and his servants/agents evicted from the land parcel Nakuru/Kapsita/1068 (the suit land). The basis of the application is that vide a judgment delivered on 10 December 2014, it was declared that it is the defendant who is the lawful owner of the suit property. 2. The plaintiffs have however refused to vacate the said land hence the application for eviction.

3. The suit as filed by the two plaintiffs was one of adverse possession. The plaintiffs claimed to have acquired by adverse possession portions of 10 and 5 acres respectively of the suit property. The suit was opposed and proceeded for hearing. In a judgment delivered on 10 December 2014, the claim for adverse possession was dismissed. The plaintiffs signalled intention to appeal by filing a Notice of Appeal and an application for stay pending appeal. That application for stay pending appeal was compromised by consent on 9 June 2015. It was agreed that the 2nd plaintiff could be allowed stay subject to deposit of the sum of Kshs. 400,000/= as security within 60 days. In default, the judgment could be executed.

4. At the hearing of the application, only Mr. Ogeto for the applicant, appeared in court. He submitted that the 2nd plaintiff has not met the conditions for stay.

5. I have considered the application. Already, there is judgment to the effect that the plaintiffs have no entitlement to the suit property. The 2nd plaintiff was granted a stay subject to conditions which he has not fulfilled. Clearly, he has no right to be on the suit property and it is only appropriate that an order of eviction be issued.

6. I therefore allow this application. I issue an order of eviction of the 2nd plaintiff from the land parcel Nakuru/Kapsita/1068. The applicant is directed to appoint a court broker to execute the eviction order and

the Officer Commanding the Elburgon Police Station is hereby ordered to provide security during the eviction exercise.

7. The costs of this application and of the eviction will be shouldered by the 2nd plaintiff.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of March , 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

No appearance on part of Counsels for applicant and respondent.

Court Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU