



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC 644 OF 1991**

**CHEPKONG MAGOBE .....1<sup>ST</sup> PLAINTIFF**

**AMOS K CHOMBOI .....2<sup>ND</sup> PLAINTIFF**

**MICHAEL KONGA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**CHEMJOR CHEPKUTO (Suing as the representative of**

**the estate of CHEPKUTO ARAP BIRIR).....DEFENDANT**

**RULING**

***(Application for eviction; application not opposed; application allowed).***

1. The application before me is that dated 22 April 2015 filed by the defendant. The application is said to be brought inter alia under the provisions of Order 22 rules 20 and 29 (1), of the Civil Procedure Rules. In essence what the applicant wants is an order to have the plaintiffs evicted from the land parcel Pokor/Kures/83 (the suit land).

2. The background to this application is that on 18 January 1991, the plaintiffs instituted this suit by way of Originating Summons, claiming that they are entitled to the suit land by way of adverse possession. The matter was heard, and vide a judgment delivered on 16 June 2006, the plaintiffs' case was allowed. The applicant herein filed an appeal, being Nakuru Court of Appeal, Civil Appeal No. 44 of 2007. That appeal was heard and the Court of Appeal reversed the decision of the High Court. The Court of Appeal was of the view that the plaintiffs had not established a good case to warrant a decree in their favour for adverse possession.

3. In this application, the applicant has averred that notwithstanding the judgment of the Court of Appeal, the plaintiffs are still trespassing into the suit property. It is claimed that they have destroyed the fence and are continuing to graze their animals.

4. Despite being served, the plaintiffs/respondents have filed no reply to this application. The application is therefore not opposed.

5. The plaintiffs failed in their quest to claim the land and I do not see why they are still on it. The applicant is entitled to an order of eviction.

6. I therefore allow the application and make the following orders :-

- (i) That the plaintiffs/respondents be evicted from the land parcel Pokor/Kures/83.*
- (ii) That the defendant/applicant do appoint a court bailiff/auctioneer to execute the order of eviction.*
- (iii) That the OCS Mogotio Police Station do provide security as the order of eviction is being executed.*

7. The applicant shall also have the costs of this application and any costs relating to the eviction shall be shouldered by the plaintiffs.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>TH</sup> day of June 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of :**

Defendant/applicant acting in person

CA: Janet