



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT NYERI**  
**ELC CIVIL CASE NO. 84 OF 2015**

**KASTURIAL PALIMAL AGGARWAL .....**  
**PLAINTIFF/APPLICANT**

**-VERSUS-**

**CHRISTOPHER NDIRITU KINYUA.....**  
**DEFENDANT/RESPONDENT**

**RULING**

1. The notice of motion dated **15th January, 2015** seeks to enforce the judgment of this court (read the Environment and Land Court delivered on 29th October 10, 2014 in this matter). Vide that judgment, **Ombwayo J.**, allowed the applicant's suit for eviction of the respondent from **L.R NO. Nanyuki/Marura/Block 8/1227** (hereinafter referred to as the suit property).
2. The application is premised on the ground that the respondent has resisted all attempts to have him vacate the suit property.
3. To ensure that peace prevails during the eviction exercise, the applicant prays that the exercise be supervised by the Officer Commanding Nanyuki Police Station.
4. When the matter came up for hearing on 10th June 2015, this court ordered that the respondent be personally served with notice to show cause why he should not be evicted. The application was listed for hearing on 1st July, 2015.
5. On 1st July, 2015 counsel for applicant informed the court that the respondent was served through his wife but had not attended court to show cause why he should not be evicted from the suit property. There being no response to the application and the notice to show cause, counsel for the applicant urged the court to allow the application as prayed.
6. Even though the respondent did not file a reply to the current application and the notice to show cause, upon perusal of the court record, I came across a letter by the respondent to the court dated 23rd March, 2014 where he contends that the decree issued in favour of the applicant is inexecutable for the reason that it concerns a different plot.
7. In support of the respondent's contention, reliance is made on a letter from the Land Registrar Laikipia dated 6th January, 2015. In that letter the Land Registrar addressed the applicant as follows:-

**“Ref: Nanyuki Marura Block 8/1227 and 618 (Nturukuma):**

**The above matter refers.**

**This office has established that the title deed was issued to you erroneously.**

**You should have been issued with title deed no. 618. You are hereby summoned to surrender title no. Nanyuki/Marura/ Block 8/1227 and you be issued with title No. Nanyuki/Marura/Block 8/618 which is the rightful parcel for you as per the records held in this office....”**

8. That letter was addressed to the applicant and copied to the court.

9. From the record, I also note that before the applicant filed the current suit, the Land Registrar had raised the same issue with the applicant. See the Registrar’s letter dated 15th November, 2011 wherein he had addressed the applicant as follows:-

**“by powers conferred upon me under Section 8(b) of the RLA Cap 300 laws of Kenya, you are hereby summoned to appear before the undersigned within 30 days from the date of this letter and that should be 16th December, 2011.**

**You should also bring with you the above mentioned title deed issued on 20/12/2006 and any other document of the said land, and failure to appear a decision will be made your presence notwithstanding.”**

10. It appears that it is the letter that prompted the filing of this suit.

11. Upon reading the judgment on which the current application is premised, I note the concerns raised by the Land Registrar concerning the suit property were not brought to the attention of the trial judge. The applicant has also failed to disclose such serious concerns regarding the title deed he holds in the current application.

12. Despite the suit and the application being undefended, **Section 1A** of the Civil Procedure Act puts an obligation on the applicant and/or his advocate to disclose all information that can assist the court in making a just determination on the issues brought before it.

13. In the circumstances of this case, despite being of the view that the procedure used by the respondent to challenge the orders issued against him is unknown in law, having read and considered the issues raised by the Registrar concerning ownership of the property, pursuant to the powers conferred on me under **Section 3A** of the Civil Procedure Act, I defer delivery of the ruling in respect of this application and order that summons be forthwith served on the Land Registrar Laikipia, to attend Court and shed light on the circumstances surrounding the issuance of the letter dated 6th January, 2015 despite existence of a court order to the effect that the suit property belongs to the applicant.

14. In the meantime, the matter shall be mentioned on 19th November, 2013 to confirm service on the Land Registrar and for further directions.

**Dated, Signed and Delivered at Nyeri this 21st day of October, 2015.**

**L N WAITHAKA**

**JUDGE**

**In the presence of:**

Ms Wambui h/b for Mr. Gichuki Mwangi for the plaintiff

N/A for the defendant

Court assistant - Lydia