

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC. CIVIL SUIT NO. 115 OF 2007

DANIEL KIMANI MBUGUA 1ST PLAINTIFF

LEONARD KAMAU MBUGUA. 2ND PLAINTIFF

JOSEPH CHEGE WACEKE.....3RD PLAINTIFF

JOHN CHEGE MBUGUA.....4TH PLAINTIFF

VERSUS

HANNAH MWIHAKI KAMAU.....DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 13th June 2013 in which the Judgment Creditor seeks for orders that:

1. The Respondents, namely Grace Muthoni Kangethe, Lucy Wanjira, Leonard Kamau Mbugua, Joseph Chege Waceke and John Chege Mbugua, be evicted from the land parcel KABETE/LOWER KABETE/1799 (hereinafter referred to as the “suit property”) as this court decided against them yet they have refused to give vacant possession in defiance of the judgment and order number 3 in the Decree.
2. That costs of this motion be provided for.

The Application is based on the grounds appearing on the face of it together with the Supporting Affidavit of the Judgment Creditor, Hannah Mwihaki Kamau, sworn on 12th June 2013 in which she averred that the Plaintiffs/Respondents brought this suit against her in order to recover the suit property on the allegation that they had lived there peacefully for over 12 years. She further averred that the suit was heard fully and the court delivered judgment on 5th November 2012 dismissing the suit and awarding her costs. She further averred that on 20th February 2013 the Decree was issued and order number 3 directed that **“the Defendant has shown that she is the registered proprietor of the said land and is entitled to quiet possession.”** She confirmed that the said Decree had been served upon the Respondents and their advocate but have defiantly and contemptuously refused to vacate the land despite notice to do so. She further averred that the Respondents’ Advocates Mr. G. Kamonde had written back stating that the court did not provide for eviction.

In response thereto, the said Respondent’s Advocate filed his Affidavit sworn on 4th October 2013 in which he averred that the Application was opposed on the ground that the court’s judgment dated 8th November 2012 did not issue a decree capable of being executed in the method requested by the Applicant.

Only the Judgment Creditor filed written submissions which have been read and taken into account by the court.

I have studied the Judgment delivered by Lady Justice Rose Ougo on 8th November 2012 and the Decree

extracted therefrom dated 20th February 2013. I confirm that indeed, Judge Ougo did make the finding that the Defendant therein has shown that she is the registered proprietor of the suit property and is therefore entitled to quiet possession thereof. It follows that the Plaintiffs were supposed to vacate the suit property to allow the Defendant to take possession. This being very clear to me, I hereby proceed to allow the Judgment Creditor's Application and do award her the costs of the Application.

DELIVERED AND SIGNED IN NAIROBI THIS 16TH

DAY OF MAY 2014.

MARY M.GITUMBI

JUDGE