

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 46 OF 2013

FORMERLY HCC 158 OF 2009

BENNER COMPANY LTD.....PLAINTIFF

VS

HENRY KIRWA KOGO.....DEFENDANT

(Application for eviction; judgment having been entered for the plaintiff for vacant possession; defendant despite being served with the judgment not vacating the suit land; application allowed; order of eviction issued).

RULING

In this matter, the plaintiff filed suit against the defendant seeking orders to have an agreement for sale of land to be deemed as having been vacated and seeking to have the defendant evicted from the suit land. Through an agreement dated 5th April 2002, the plaintiff as vendor, agreed to sell the land parcel L.R No. 23173/3 to the defendant at a consideration of Kshs. 2, 226,950/=. The defendant did not abide by the terms of the agreement and only paid Kshs. 750,000/=. He had however been given possession of the land. The parties had a clause in which the party in breach was to forfeit 25% of the purchase price.

I heard the matter and entered judgment for the plaintiff on 16 July 2013. The suit was undefended by the defendant. I rescinded the contract of the parties, and ordered the defendant to forfeit a sum of Kshs. 566,737.50/= as damages for breach of contract, the same being 25% of the purchase price. I also ordered the defendant to vacate the suit land within 30 days of service of the judgment and/or decree.

Through an application dated 25 July 2014, the plaintiff has come to court seeking orders of eviction of the defendant from the suit land. The supporting affidavit has annexed an affidavit of service showing that the defendant was served with a copy of the judgment and decree on 23 July 2013 and 30 September 2013. He has refused to vacate the suit land.

I see no reason why I should decline to issue orders of eviction. I allow this application. I hereby issue an order of the eviction of the defendant from the land parcel L.R No. 23173/3. I direct the plaintiff to appoint a court bailiff to execute the order of eviction. I also direct the Nandi County Commander and the OCS Soghor Police Station to provide security to the court bailiff and ensure that this order is duly executed.

The defendant shall bear the costs of this application and the costs of the eviction.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 28th DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. H.O. Aseso holding brief for Mr. Kenani for plaintiff/applicant.