



**REPUBLIC OF KENYA**

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

**E&L NO. 393 OF 2013**

**ABIGAELE BARMAO.....PLAINTIFF**

**VS**

**MWANGI THEURI.....DEFENDANT**

***(Application for eviction; previous order that judgment first be served before applying for eviction; no proof of service of judgment; application dismissed)***

**RULING**

The application before me is that dated 18 September 2014. It seeks an order of eviction against the defendant.

In this suit, the plaintiff contended that she is the absolute proprietor of the land parcel Uasin Gishu/Kahungura Scheme/237. It was her case that the defendant has trespassed on the suit land. In her pleadings the plaintiff inter alia sought orders to have the defendant evicted from the suit land. The defendant never filed appearance nor defence and the matter proceeded as an undefended cause. I heard the evidence of the plaintiff and on 23 April 2014 I entered judgment for the plaintiff. I inter alia ordered the defendant to vacate the suit land within a period of 30 days of service of the judgment and/or decree.

In this application, it is contended that the defendant has failed to move out of the suit land. That is the reason that the plaintiff wants the order of eviction.

I have gone through the application and the supporting affidavit. Although it is stated in the application that the judgment/decree was served, I have no evidence through an affidavit of service that shows that the judgment and/or decree has been served. It may very well be that the defendant is not aware that there is a decree that has ordered him to vacate the suit land. In absence of proof that the judgment and/or decree has been served upon the defendant, I am unable to issue the order of eviction.

I direct that the judgment/decree be served and it is after 30 days that this court may issue an order of eviction.

I have no option but to dismiss this application but make no orders as to costs.

**DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF OCTOBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Delivered in the presence of:***

***Delivered in the presence of:***

***Mrs. L.C. Kamau present holding brief for M/s A.K. Chepkonga for plaintiff/applicant.***