



**Ndafu & 2 others v Barasa (Sued as the personal representative of Barasa Waswa)  
(Environment & Land Case 23 of 2016) [2024] KEELC 1326 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1326 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE 23 OF 2016**

**EC CHERONO, J  
MARCH 11, 2024**

**BETWEEN**

**SOSPETER JUMA NDAFU ..... 1<sup>ST</sup> PLAINTIFF  
TOBIAS WANGILA NDAFU ..... 2<sup>ND</sup> PLAINTIFF  
JOSEPH NDAFU NJURUKANI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**EMILY NALIKA BARASA ..... DEFENDANT  
SUED AS THE PERSONAL REPRESENTATIVE OF BARASA WASWA**

**RULING**

1. By Notice of Motion dated 8<sup>th</sup> November, 2023 the Applicant sought for the following orders: -
  - a. Spent
  - b. That Dasemy Auctioneers being licensed auctioneers whom the applicants have instructed do carry out eviction.
  - c. That the officer commanding station Kimaeti subcounty be ordered to enforce and provide security to Dasemy Auctioneers in execution of the courts decree.
  - d. Costs of this application be awarded.
2. The application is based on the grounds on the face of the application and the Supporting Affidavit sworn on 8<sup>th</sup> November 2023. The applicant avers that the honourable court delivered judgment on 20<sup>th</sup> September, 2021 where it decreed that the applicant is entitled to the suit property (Land Parcel no. West Bukusu/West Saboti/607) and the respondent was ordered to vacate within three months of the judgment or be evicted therefrom.



3. Being aggrieved by the said judgment, the respondent is said to have preferred an appeal against the said judgment and decree and the appellate court rendered itself upholding the trial court's decision. The applicant stated that despite the court of appeal decision, the plaintiff/respondent has not vacated the suit land and they continue to utilize the same to their detriment. The applicant therefore makes the current application which he argues has been brought in a timely manner.
4. The application is opposed by the respondents who filed a replying affidavit sworn on 7<sup>th</sup> December, 2023. The respondents argued that they are not in occupation of the suit land i.e Land parcel no. W.Bukusu/W. Siboti/607 but are in occupation of land parcel no. W.Bukusu/W.Siboti/504. The respondents contend that the applicants are at liberty to occupy the suit land and that the current application was baseless.
5. When the said application came up for hearing, Parties took directions to canvass the same by way of written submissions.
6. It is not in contention that judgment was entered in favour of the applicant in this matter where the court made the following declarations;
  - a. That the plaintiffs claim is dismissed.
  - b. A declaration is hereby issued that the land parcel No.West Bukusu/West Siboti/607 is the property of the defendant.
  - c. The defendant shall forthwith apply to the land registrar Bungoma who shall register her as the proprietor of the land parcel No. West Bukusu/West Siboti/607.
  - d. The plaintiffs, their families, agents, servants and any other persons occupying the land parcel No. West Bukusu/West Siboti/607 shall vacate it within three (3) months of this judgment or be evicted therefrom.
  - e. Thereafter, the plaintiffs, their families, agents, servants or any persons acting through them shall be permanently restrained from trespassing upon ploughing or doing any acts which are prejudicial to the defendant's proprietary interests in the land parcel West Bukusu/West Siboti/607.
7. It is also not in contention that the respondent was aggrieved by the said judgment and preferred an appeal to the court of appeal vide CoA Case no. E149 of 2022 wherein judgment was entered on 6<sup>th</sup> October, 2023 and the appeal was dismissed. Therefore, the judgment of this court was upheld. It is on this basis that the applicant has filed the current application.
8. The respondents in their replying affidavit state that they are not in occupation of the suit land and that the orders sought are not applicable and the applicant is free to occupy the suit land. They aver that they are in occupation of land parcel no. W.Bukusu/W.Siboti/504 which they allege is properly demarcated. In support of this, they have however attached a certificate of official search for land parcel no. W. Bukusu/N.Myanga/524. This court is at a loss to the relevance of this document which ideally does not prove the respondent's assertions.
9. It therefore appears as if the respondents have not adhered to the terms of this court's judgment and has refused to vacate the suit land. There is no other option to have the applicant enjoy the fruits of her judgment other than having the respondent forcefully evicted. I have no reason to deny the applicant what she has asked for in this application.



10. In the case of *Njeru Mugeru vs. Eminab Nkirote Njagi* [2016] eKLR where a similar application had been made and the Court stated thus: -

“I find that the application seeks to implement the judgement of the Court. The application is allowed.”

11. In light of the foregoing, the application dated 8<sup>th</sup> November, 2023 is hereby allowed with costs to the applicant.

**DATED, SIGNED AND DELIVERD AT BUNGOMA THIS 11<sup>TH</sup> DAY OF MARCH, 2024**

.....

**HON.E.C CHERONO**

**ELC JUDGE**

**In the presence of;**

1. Mr. Anwar H/B for Wamalwa S. for plaintiff
2. M/S Adongo for Respondent
3. Bett C/A

