



**Cheruiyot v Masoi & 33 others (Environment & Land Case  
262 of 2017) [2024] KEELC 3901 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3901 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 262 OF 2017**

**CG MBOGO, J**

**APRIL 30, 2024**

**BETWEEN**

**ERIC KIPLANGAT CHERUIYOT ..... PLAINTIFF**

**AND**

**RICHARD MASOI & 33 OTHERS ..... DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion application dated May 29, 2023 filed by the plaintiff/applicant on even date. The application is expressed to be brought under order 51 rule 1, order 22 rule 29 of the Civil Procedure Rules and section 3A of the Civil Procedure Act seeking the following orders: -
  1. Spent.
  2. That this honourable court be pleased to issue an order of eviction of the defendants, their agents, servants, heirs or any other persons claiming through them from title no. CisMara/Olpusimoru/428.
  3. That the OCS Olokurto Police Station be ordered to provide security to court bailiffs during the eviction.
  4. That the costs of this application be in the cause.
2. The application is premised on the grounds inter alia that judgment has already been entered in favour of the plaintiff/applicant for the eviction of the defendants/respondents even though it is subject to an appeal.
3. The application was supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that this court granted a conditional stay of execution pending appeal that



- the defendants/ respondents furnish security of Kes 2,000,000/- vide a ruling delivered on March 22, 2022 but they have failed to comply with the terms thereof.
4. The plaintiff/applicant further deposed that there being no compliance with the conditional stay granted, he is entitled to an eviction order. He went on to depose that it is apparent that the defendants/ respondents will not vacate the suit property unless forcibly evicted therefrom.
  5. In response to the application, the defendants/respondents filed grounds of opposition dated July 18, 2023 challenging the application on the following grounds: -
    1. That the application as presented is premature, misconceived, incompetent and or otherwise legally untenable.
    2. That it is not true that the defendants/respondents have not complied with court orders as purported by the applicant.
    3. That the orders sought herein by the applicant, if granted will be an abuse of the court as the matter is subject to an appeal.
    4. That the defendants/applicants filed for review of the orders of the court and parties should await the ruling of the honourable court.
    5. That if this honourable court proceeds with the application, there is a real possibility that the outcome of the ruling together with the appeal will be nugatory.
    6. That the application is an abuse of the process of the court thus they are proper for striking out with costs.
    7. That I therefore urge the court to dismiss the application with costs to the defendant as the same is frivolous, vexatious and an abuse of the court process.
  6. On February 22, 2024, the court directed that the application be canvassed by way of written submissions. On March 5, 2024, the plaintiff/applicant filed his written submissions dated March 1, 2024 where he raised two issues for determination as follows: -
    1. Whether the conditions for grant of orders of stay of execution have been satisfied.
    2. Whether an order of eviction issued on November 1, 2018 against the defendants should be enforced.
  7. On the first issue and while relying on the case of *Carter & Sons Limited v Deposit Protection Fund Board & 2 others*, Civil Appeal No. 291 of 1997, the plaintiff/ applicant submitted that the court granted the stay on condition that the defendants/ respondents would deposit Kes 2,500,000/- being the security for costs in a joint account name of both advocates which was further reduced to Kes 1,500,000/- vide a ruling delivered on 6<sup>th</sup> May, 2020. It was his submission that despite the revision of the security amount, the defendants/respondents have neglected to pay the amounts for 9 months which compromises the element of due performance.
  8. The plaintiff/applicant submitted that due to the failure to honour the condition, the orders issued on June 25, 2019 and revised on May 6, 2019 automatically invalidates the orders of stay of execution granted by this court.
  9. On the second issue, the plaintiff/applicant submitted that disallowing the instant application would deprive him of the right to enjoy the fruits of the judgment issued in his favour on November 1, 2018.



10. The defendants/respondents did not file their written submissions. Be that as it may, I have considered the application and the grounds of opposition. In my view, the issue for determination is whether the plaintiff/applicant is entitled to the orders of eviction.
11. I have perused the court record in this matter and I note that judgment was delivered in favour of the plaintiff/applicant on 1<sup>st</sup> November, 2018 wherein the defendants/respondents were ordered to vacate the suit land within 90 days from the date of the judgment. It followed thereafter, that the defendants/respondents sought stay of execution pending appeal. Kullow J, in a ruling delivered on June 25, 2019 granted stay on condition that the defendants/respondents deposit the amount of Kes 2,500,000/- as security for costs within 14 days from the date of the said ruling.
12. The defendants/respondents again sought for a review of the orders. The court lowered the security to be deposited to Kes 1,500,000/ which was to be deposited within 60 days therefrom. The plaintiff/applicant sought orders of eviction in a notice of motion dated October 8, 2020. Kullow, J in a ruling delivered on 22<sup>nd</sup> March, 2022, suo moto, reviewed the amount of the security for costs from the sum of Kes 2,500,000/- to Kes 2,000,000/- which was to be deposited within 45 days from the date of the ruling, in default, eviction to issue.
13. From the above, it can be seen that the court was lenient in the interest of justice in ensuring that the appeal, if any would not be rendered nugatory. The defendants/respondents on the other hand, have not supplied evidence to show that they complied with the orders of the courts on deposit of the security for costs. The plaintiff/applicant in my view has also been lenient with the defendants/respondents from the time when the orders were issued being March 22, 2022.
14. I am mindful of the fact that this court is called upon to uphold substantive justice which includes that a successful party, in the course of litigation, enjoys the fruits of judgments. I, therefore, see no reason why the defendants/respondents should not be evicted from the suit land.
15. Arising from the above, the notice of motion dated May 29, 2023 is hereby allowed in the following terms: -
  - i. An order of eviction is hereby issued against the defendants/ respondents, their agents, servants, heirs or any other persons claiming through them from Title No. CisMara/Olpusimoru/428.
  - ii. The OCS Olokurto Police Station to provide security to court bailiffs during the evictions.
  - iii. The defendants/respondents to bear the costs of the application.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**30/04/2024.**

In the presence of: -

Mr. Meyoki Pere – C.A

