



Pwani Oil Products Limited v Aboo & 3 others (Environment & Land Case 274 of 2016) [2024] KEELC 3717 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 274 OF 2016
NA MATHEKA, J
APRIL 25, 2024**

BETWEEN

PWANI OIL PRODUCTS LIMITED APPLICANT

AND

FATMA ESSACK ABOO 1ST RESPONDENT

SHAMIM ESSACK ABOO 2ND RESPONDENT

NASEEM ESSACK ABOO 3RD RESPONDENT

ABDULHAMID ESSACK ABOO 4TH RESPONDENT

RULING

- 1 The application is dated 25th September 2023 and is brought under Sections 152A, 152B, 152E and 152F of the *Land Act* no 5 of 2012 (as amended), Sections IA, 1B, 34 of the *Civil Procedure Act* Cap 21, Laws of Kenya, and Order 51 rule 1 of the *Civil Procedure Rules*, 2010 seeking the following orders;
1. That this application be certified urgent and be allocated a hearing date on a priority basis.
 2. That the Respondent do give the Applicant vacant possession of the land known as Plot no 678/VI/MN within seven (7) days of the Court's orders or within such reasonable period as the Court deems fit.
 3. That in default of giving vacant possession within seven (7) days of the Court's orders or within such reasonable period as the Court will deem fit, the Respondent be evicted from the land known as Plot no 678/VI/M.N, pending the hearing and determination of this suit.
 4. That the Officer Commanding the Jomvu Police Station do assist in the eviction for purposes of peace and order.



5. That the Honourable Court do issue any other and/or further orders, and/or directions in the interest of justice and fairness.
 6. That the costs be provided for.
- 2 It is based on the that this Court has pronounced itself in the matter herein therefore the Respondent lacks legal basis to continue trespassing the land parcel known as Plot no 678/VI/M.N. That the Applicant has been deprived of use of its legitimately obtained and bona-fide land by the Respondent. That the Applicant is the lawful registered proprietor of the property known as Plot no 678/VI/MN Jomvu and fully justified to exercise it is ownership rights thereon to their maximum extent as codified under Article 40 of the Constitution of Kenya. That the Respondents have gone into unlawful occupation of the suit property by way of living there and making other improvements thereon hence preventing the Applicant from dealing with his own property. That the Applicant issued and served a three-month Notice to Vacate Land dated 24th January 2022 against the Respondent in accordance with Section 152E of the Land Laws (Amendment) Act no 28 of 2016. That the subject Notice to Vacate Land was also copied to the Deputy County Commissioner's office and the Officer Commanding Station of Jomvu Police Station for purposes of awareness and coordination of the security during the relevant times. That this Honorable Court delivered judgement on 19th January 2022 dismissing the Respondent's suit claiming possession over land parcel known as Plot no 678NI/MN hence adjudging the Applicant as the bonafide owner of all that parcel known as Land Reference Number MN/V1/678.
- 3 That the officers from Jomvu Police Station under whose jurisdiction the subject property falls, have taken the position that even if the Applicant had communicated to the Sub-County Commissioner's office of his intent to eject the Respondent for encroaching on his property, he still had to secure an express order from this Honourable Court directing the Officer Commanding the Jomvu Police Station to provide him with security as he goes about that action and thereby maintaining the peace and good order. That the Officer Commanding Station (OCS), the Jomvu Police Station be does ensure that the Respondents comply with the orders granted by this Court. That it is in the interest of fairness and justice to grant the orders sought.
- 4 1st Respondent states that, she was aggrieved by the judgment of this Court and she have since lodged an Appeal to the Court of Appeal which is pending determination. (Annexed is a copy of the Notice of Appeal marked FEA 1). That after filing the Notice of Appeal, they engaged the Applicants herein and reached a consent on terms that they do provide an alternative accommodation settlement of the matter and the only dispute so far is how much to be paid in terms of the compensation for alternative accommodation, otherwise the matter was amicably settled. (Annexed are copies of letters marked FEA 2 - 4). That there is no need for police security to execute the orders because the matter has since been compromised and the instant application is aimed at aborting the ongoing amicable settlement and therefore it should be dismissed with costs.
- 5 This court has considered the application and submissions therein. In this suit, the Court delivered judgement on 19th January 2022 dismissing the Respondent's suit claiming possession over land parcel known as Plot no 678NI/MN hence adjudging the Applicant as the bonafide owner of all that parcel known as Land Reference Number MN/V1/678. The Applicant issued and served a three-month Notice to Vacate Land dated 24th January 2022. This is not disputed but the 1st Respondent states that, she was aggrieved by the judgment of this Court and she have since lodged an Appeal to the Court of Appeal which is pending determination. That after filing the Notice of Appeal, they engaged the Applicants herein and reached a consent on terms that they do provide an alternative accommodation settlement of the matter and the only dispute so far is how much to be paid in terms



of the compensation for alternative accommodation. I find that there is no stay of the said judgement in this matter from the court of Appeal. Filing an appeal does not grant the Respondents an automatic stay. There is no consent on record compromising the said judgement as alleged by the Respondents. I find that the application is merited and I grant the following orders;

1. That the Respondent do give the Applicant vacant possession of the land known as Plot no 678/VI/MN within sixty (60) days from the date of service of this order and in default eviction order to issue forthwith.
2. That the Officer Commanding the Jomvu Police Station do assist in the eviction for purposes of peace and order.
3. That the costs of his application to the Applicant.

6 It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

