



Wambui & another (Suing as the Administrator of the Estate of Emma Wangui Kamau - Deceased) v Karanja & another (Environment & Land Case 570 of 2017) [2025] KEELC 945 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 945 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 570 OF 2017
JM ONYANGO, J
FEBRUARY 26, 2025**

BETWEEN

**JANE WAMBUI 1ST PLAINTIFF
ROBERT KAGUNYA KAMAU 2ND PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF EMMA WANGUI
KAMAU - DECEASED**

AND

**BERNARD HERMAN KARANJA 1ST DEFENDANT
TELEPOSTA PENSION SCHEME TRUSTEES 2ND DEFENDANT**

RULING

1. In the Notice of Motion Application dated 31st October 2024 placed before me, the Plaintiffs/Applicants seek the following orders:
 - a. Spent
 - b. That an order of eviction be issued removing the 1st Defendant/Respondent, his family, servants, employees and/or agents from plot number Thika Municipality Block 9/301 until the Plaintiffs/Applicants get vacant possession thereof.
 - c. That the Officer Commanding Thika Police Station do supervise the said eviction and provide the security thereof.
 - d. That costs of this application be borne by 1st Defendant/ Respondent.
2. The Application is based on the grounds set out on the face of the Motion and on the Supporting Affidavit of Robert Kagunya Kamau the Plaintiff herein, sworn on the same date. The Plaintiffs



claimed that through a judgment delivered on 8th October 2021, the court ordered the Defendants to transfer plot number Thika Municipality Block 9/301 to their names. The Plaintiffs deponed that in compliance with the court's decree, the 2nd Defendant handed over the original title documents and the transfer to them. However, the Plaintiffs faulted the 1st Defendant for failing to give them vacant possession of the suit property despite being requested to do so, but instead, they proceeded to renovate the structures on the suit property.

3. The Plaintiffs urged the court to grant them an eviction order against the 1st Defendant to enable them obtain vacant possession of the suit property. The Plaintiffs further urged the court to grant them an order directing the Officer Commanding Thika Police Station to provide security to the court bailiffs while effecting the eviction orders.
4. The Defendants, neither filed a response to the application nor appeared during the hearing thereof despite being served with the application. An Affidavit of Service sworn on 12th November 2024 by Jessee Kariuki, the Advocate handling this matter on behalf of the Plaintiffs was also filed. The application was therefore unopposed.

Applicant's Submissions

5. The Plaintiffs canvassed the application through written submissions dated 17th January 2025 through M/s Jessee Kariuki & Co. Advocates. In their submissions, the Plaintiffs relied on the decision in the case of Simon Ngao Mbithi vs Daniel K Ngonu[2020]eKLR to submit that even if eviction orders had not been prayed for in the pleadings, the court has a right to issue further orders to effectuate its previous orders.

Analysis and Determination

6. The Court has carefully read and considered the application, the submissions, the authority cited and the relevant provisions of law and finds that the issue for determination is whether the Plaintiffs are entitled to an eviction order.
7. A brief background to this case is that the Plaintiffs approached this court by way of a Plaint dated 18th May 2017 seeking inter alia an order of specific performance to compel the 1st Defendant to do all that is necessary to facilitate the transfer of the suit property from the 2nd Defendant to the Plaintiffs and/or in the alternative the 2nd Defendant be ordered to transfer the suit property into the names of the plaintiffs.
8. The courts have previously held in the cases of Tatecoh Housing & Cooperative SACCO Ltd v Qwetu SACCO Ltd (2021) eKLR and Norah Ndunge Henry & Another v Abednego Mutisya & Another (2022) eKLR that an eviction order can only be granted within a substantive suit and not by way of an application. It is evident from the decree that no order for eviction was sought or decreed by the court. In the circumstances, this court cannot issue orders that were neither granted in the judgment nor decreed in the decree.
9. Order 38 of the Civil Procedure provides that:
 - “ 38. Powers of Court to enforce execution
Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree-
By delivery of any property specifically decreed.”



10. The case of Simon Ngao Mbithi (supra) is distinguishable from the instant suit as in that case there was an order of injunction which the court held was a prohibitory and mandatory injunction for eviction of the defendants from the suit premises and that the said order could only be effected through eviction of the defendants from the suit premises. In the instant suit there was no prayer for injunction by the Plaintiffs and there would be no basis for granting an order of eviction.
11. The upshot is that the application lacks merit and it is hereby dismissed. Given that the Defendants did not respond or participate in the application, each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 26TH DAY OF FEBRUARY 2025.

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J.M ONYANGO

JUDGE

In the presence of :

Mr Macharia for Mr Kariuki for the Plaintiff/ Applicant

No Appearance for the Defendants

Court Assistant: Hinga

