



**Mogeni t/a Elimonyaco Auctioneers v Amolo (Suing as legal representative of the Estate of Jacktone Amolo Oyare); Okongo & 2 others (Defendant) (Environment & Land Case 744 of 2017) [2024] KEELC 5421 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5421 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT & LAND CASE 744 OF 2017  
GMA ONGONDO, J  
JULY 17, 2024**

**BETWEEN**

**ELIJAH MOGENI T/A ELIMONYACO AUCTIONEERS ..... APPLICANT**

**AND**

**JAMES OWUOR AMOLO (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF JACKTONE AMOLO OYARE) ..... RESPONDENT**

**AND**

**PETER ADONGO OKONGO ..... DEFENDANT**

**JOHN ANGIRO ADUKE ..... DEFENDANT**

**MARY AWACH ..... DEFENDANT**

**RULING**

1. By an ex-parte notice of motion application dated 30<sup>th</sup> April 2024 generated under, inter alia, sections 3, 3A and 78 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, the applicant, Elijah Mogeni t/a Elimonyaco Auctioneers, is seeking the orders infra;
  - a. Moot.
  - b. That an order be issued to Officer Commanding National Police Service (OCS) Uriri Station to provide the applicant with reasonable security during the execution and evict the Plaintiff/ Respondent from the suit parcel land title No. Kanyamkago/Kajuju/488 and effect the court order issued on the 11<sup>th</sup> May 2019.
2. The application is founded upon the applicant's supporting affidavit of even date and five grounds set out on the face of it and they include;-



- a. That the applicant herein Elijah Mogeni T/a Elimonyaco Auctioneers on the 4<sup>th</sup> May 2020 received an eviction order arising from this case No. 744 of 2017 dated 11<sup>th</sup> May 2013 from S. Ndege & Co. Advocates with express instructions to evict the respondents from suit parcel land title No. Kanyamkago/kajulu/488.
- b. That it would be in the interests of Justice and in accordance with the law that the orders sought be granted.
3. Mr. S. Ndege learned counsel for the 1<sup>st</sup> defendant/Decree Holder has implored the court to grant prayer No. 2 sought therein as stated in paragraph 1 (b) hereinabove in view of the nature of the application and the Court Appeal decision which upheld the judgment of this court in this suit.
4. By the judgment delivered on 23<sup>rd</sup> June 2023 in Kisumu Court of Appeal Civil Appeal No. 73 of 2019, the judgment of this court rendered on 20<sup>th</sup> March 2019, was upheld and the appeal dismissed with costs.
5. In the premises, the application is merited being guided by sections 3, and 3A (supra) and sections 3 and 19 of the *Environment and Land Court Act*, 2015 (2011). More fundamentally, Article 159 (2) (b) of *the Constitution* of Kenya 2010 which provides; -

“Justice shall not be delayed.”
6. Accordingly, the application is allowed in terms of prayer No. 2 therein for the execution of the decree, in line with the judgment of this court herein.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MIGORI THIS 17<sup>TH</sup> DAY OF JULY, 2024.**

**G.M.A. ONGONDO**

**JUDGE**

In presence of: -

Mr. S. Ndege learned Counsel for the 1<sup>st</sup> defendant/Decree Holder

Court Assistant – Tom Maurice

