



**Mwangi v Waraga (Environment & Land Case 493 of 2010)  
[2024] KEELC 6665 (KLR) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 6665 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 493 OF 2010  
MD MWANGI, J  
AUGUST 6, 2024**

**BETWEEN**

**EUNICE NJERI MWANGI ..... PLAINTIFF**

**AND**

**JAMES MAINA WARAGA ..... DEFENDANT**

*(In respect of the request for directions by the Deputy Registrar  
on the NTSC against the Defendant-Judgement-Debtor.)*

**RULING**

**Background**

1. On June 6, 2021, the Deputy Registrar of this Court, Hon. Vincent Kiplagat referred this matter to this Court for directions on the Notice to Show Cause. He noted that the Defendant/Judgement-Debtor seeks to challenge the judgment delivered by Lady Justice Gacheru delivered on 21/09/2016 on the grounds that the Judgment-Debtor was mentally incapacitated even before the suit was determined.
2. The Notice to Show Cause dated 25<sup>th</sup> May, 2023 is issued pursuant to the provisions of Order 22 Rule 18 of the Civil Procedure Rules. It calls upon the Defendant/Judgment Debtor to show cause why execution should not issue against him through attachment and sale of his movable properties and issuance of eviction orders in accordance with the judgment delivered by this court way back on 21<sup>st</sup> September, 2016 after a hearing.
3. I note from the judgement of my sister Judge Gacheru that the Defendant had entered appearance and filed a statement of Defence dated 29<sup>th</sup> November 2010 denying the plaintiff's case against him. He alleged that he was the rightful owner of the suit property.
4. The court found in favour of the plaintiff/Decree holder and declared that the plaintiff was the absolute and indefeasible owner of the suit property. The Plaintiff was therefore entitled to all the rights and



privileges under section 25 of the *Land Registration Act*. The court directed that the defendant, family members, agents, servants and or associates vacates the suit premises and give vacant possession to the plaintiff within three (3) months from the date of the judgment failing which the plaintiff was to carry on with eviction.

5. Apparently, the Defendant/Judgment Debtor through his Advocate, Purity Makori, filed a replying affidavit sworn by the said Purity Makori on 18<sup>th</sup> October 2023 in response to the Notice to show cause. The deponent sought that the Notice to show cause be held in abeyance awaiting the determination of High Court Misc Civil Application No. E164 of 2023 where the wife of the Defendant/Judgment Debtor had filed a petition seeking to be appointed guardian ad litem on behalf of the defendant/Judgment debtor who had allegedly been adjudged a person of unsound mind.
6. In a further affidavit sworn on 29<sup>th</sup> January, 2024, the same deponent confirmed that indeed Grace Njeri Maina had been appointed a guardian ad Litem for the defendant/Judgment Debtor herein. She therefore, in that capacity, has the locus standi to represent the interests of the Defendant/Judgment Debtor in this case.
7. The guardian ad Litem filed a replying affidavit of her own sworn on 5<sup>th</sup> April 2024. In the said affidavit, the deponent alleges that the Defendant/Judgment debtor did not participate in the hearing of the case as he was a person of unsound mind then, incapable of defending himself. She further alleges that her children live in the suit property and that they have occupational rights that the court ought to consider before issuing an eviction order. She deposed that she is not in a position to pay the decretal amount ordered by the Court.
8. Order 22 Rule 19 of the Civil Procedure Rules requires a person to whom a Notice to Show Cause under Rule 18 is served to show cause to the satisfaction of the court why the decree should not be executed or to offer an objection to the execution of the decree. The court is then required to consider the objection and make such orders as it deems fit.
9. The defendant/Judgment Debtor through his guardian ad Litem has presented his objection in the form of a replying affidavit sworn on 5<sup>th</sup> April 2024. Order 22 Rule 19 of the Civil Procedure Rules does not prescribe the form that the objection should take. The replying affidavit suffices as an objection for purposes of rule 19.
10. The Deputy Registrar then, being the court seized of the matter should therefore proceed to consider the objection by the defendant/Judgment Debtor and the response by the decree holder and make such orders as he deems fit. The Registrar is so empowered under the provisions of Order 49 of the Civil Procedure Rules.
11. This file will accordingly be returned to the Deputy Registrar for consideration of the objection to the NTSC under Order 22 rule 19 of the Civil Procedure Rules.

It is so directed.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF AUGUST 2024**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Wambua for the Plaintiff/Decree-holder

N/A for the Defendant/Judgement-debtor



Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

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