



REPUBLIC OF KENYA



**Biegon v Rono & 3 others (Environment & Land Case 3 of 2018)
[2024] KEELC 5989 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5989 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 3 OF 2018
LA OMOLLO, J
SEPTEMBER 19, 2024**

BETWEEN

EDWIN KIPKOECH BIEGON PLAINTIFF

AND

PETER KIPNGETICH RONO 1ST DEFENDANT

RAYMOND KIPKEMOI RONO 2ND DEFENDANT

GEOFFREY KIPKEMOI RONO 3RD DEFENDANT

MARYLYNE CHEPNGETICH 4TH DEFENDANT

RULING

Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 30th January, 2024 which is expressed to be brought under Order 22 Rule 82 & 83 of the Civil Procedure Rules and Sections 1, 1A, 3 and 3A of the *Civil Procedure Act*.
2. The Applicant seeks the following orders;
 - a. Spent
 - b. That this Honourable Court be please (sic) to issue an order of eviction of the Defendants from land parcel No. LR No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba)/ 202 measuring 6.87 hectares as per the judgement delivered on 2nd November, 2023 and give exclusive vacant possession, occupation and use to the Plaintiff.
 - c. That this Honourable Court do appoint Hegeons Actionners(sic) to carry out eviction and to attach the Defendant's movables to recovers (sic) costs of Kshs.882,554/= (Eight Hundred



and Eighty-Two Thousand Five Hundred and Fifty-Four Shillings Only) as per the Certificate of Costs issued on 19/3/2024.

- d. That the Honourable Court be pleased to order the OCS Kipkelion Police Station to give security for execution of the Eviction Order.
 - e. That the Defendants be ordered to pay the costs of the eviction exercise that may be incurred by the Plaintiff/decree holder.
3. The application is based on the grounds on its face and the supporting affidavit of one Edwin Kipkoech Biegon sworn on 30th January, 2024.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Complaint dated 10th January, 2018 where he had sought the following orders;
- a. A permanent order of injunction do issue restraining the Defendants, their servants, agents, employees, representatives, assigns and heirs from encroaching onto, cultivating, grazing animals, cutting down trees and or doing any acts that are detrimental to the Plaintiff's right of quiet and peaceful occupation, possession and use over land parcel No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba) 202 measuring 6.87 Hectares.
 - b. An eviction order to be issued against the Defendants to vacate land parcel No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba) 202 measuring 6.87 Hectares.
 - c. Mesne Profits.
 - d. Costs of this suit.
 - e. Any other remedy this Honourable Court may deem fit and just to grant.
5. On 19th April, 2018 the Defendants/Respondents filed their Statement of Defence where they denied the averments in the Complaint and sought that the Plaintiff/Applicant's suit be dismissed with costs.
6. Upon each party giving their evidence, this Court delivered judgement on 2nd November, 2023 in the following terms;
- a. The Defendants herein their servants, agents, employees, representatives, assigns and heirs are herein restrained from encroaching onto, cultivating, grazing animals, cutting down trees and or doing any acts that are detrimental to the Plaintiff's right of quiet and peaceful occupation, possession and use over land No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba) 202 measuring 6.87 Hectares.
 - b. The Defendants shall by themselves and any other person claiming through them vacate forthwith from land parcel LR No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba) 202 within 30 days upon delivery of this judgement and if they fail to so vacate, an order of eviction be issued against them.
 - c. Cost of suit is awarded to the Plaintiff.
7. The application under consideration first came up for hearing on 13th May, 2024 when the Defendants/Respondents were given time to file their response.
8. On 3rd June, 2024 the application was reserved for ruling.



Plaintiff/Applicant's Contention.

9. The Plaintiff/Applicant contends that this Court in its judgement delivered on 2nd November, 2023 found that he is the legal owner of land parcel No. Kericho/Kipkelion Barsiele Block 2 (Kaplabia)/202 measuring 6.87 Hectares.
10. The Plaintiff/Applicant also contends that Defendants/Respondents were ordered to vacate the suit property within thirty days from the date of delivery of the judgement.
11. The Plaintiff/Applicant further contends that despite the orders given by the Court, the Defendants/Respondents have refused to give him vacant possession.
12. It is his contention that the Defendants/Respondents were served with the decree and judgement but they have failed to comply.
13. It is also his contention that it is apparent that the Defendants/Respondents will not vacate the suit property unless they are forcefully evicted and that the OCS Kipkelion Police Station should oversee the said eviction.
14. It is further his contention that this Court should appoint Hegeons Auctioneers to carry out the eviction and to attach the Defendants/Respondents movables to recover the costs of Kshs. 882,554/= as per the Certificate of Costs issued on 19th March, 2024.
15. He contends that he is advised by his advocates on record that this Court has the power to issue the orders sought.
16. He also contends that the Defendants/Respondents are using the suit property without his consent and that their activities are detrimental to his rights to peaceful occupation, possession and use of his land as enshrined in the Constitution. They are in occupation of the suit property despite the Court in its judgement giving them thirty days to vacate the land.
17. He further contends that that he is now seeking this Court's assistance to remove the Defendants/Respondents from the suit property.
18. It is his contention that because of the Defendants/Respondents unlawful actions he is unable to use the land.
19. He ends his deposition by stating that it is in the interest of justice that the Defendants/Respondents be evicted from the suit property and his constitutionally enshrined right to own property safeguarded.

The Defendants/Respondents Response.

20. The Defendants/Respondents filed a Replying Affidavit sworn on 29th May, 2024 by the 1st Defendant/Respondent.
21. He deposes that he is aware that this Court delivered judgement in the present matter on 2nd November, 2023 in favour of the Plaintiff/Applicant.
22. He also deposes that the Court in its judgement granted the Defendants/Respondents thirty days stay of execution from the date of delivery of judgement which has since lapsed.
23. He further deposes that there is a pending application before this Court seeking orders of stay of execution which was set down for hearing on 3rd June, 2024.



24. It is his deposition that it is trite law that a successful party in litigation is entitled to enjoy fruits of his judgement but he urges this Court not to grant the prayers sought pending the hearing the determination of their application which seeks for stay of execution of the judgement.
25. It is also his deposition that he is advised by his advocates on record that eviction is a 'procedural process' which can only be enforced in adherence to the lawful processes set in law.
26. It is further his deposition that he together with his Co-Respondents were surprised when they were served with the present application to vacate land parcel No. Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/102 measuring 6.87 Ha without any prior notice from the Plaintiff/Applicant.
27. He deposes that he has been advised by his advocates on record that Section 152E of the Land Act and Regulation 65 of the Land Regulations (2017) obligates a lawful owner of land to issue a three (3) months' notice in writing to a trespasser to vacate the land in issue. The said notice is to be served upon the Deputy County Commissioner in charge of the area as well as the Officer Commanding the Police Division of the area.
28. He also deposes that the Plaintiff/Applicant has inherently and intentionally violated the said procedure.
29. He further deposes that the Plaintiff/Applicant has not tendered any evidence to demonstrate that he issued the three-month eviction notice to the Defendants/Respondents and the Deputy County Commissioner as well as to the Officer Commanding the Police Division of the area.
30. It is his deposition that the present application is misconceived, misinformed and prematurely filed before this Court.
31. It is also his deposition that the present application has been filed in bad faith with intent to deceive this Court that eviction orders had been issued against the Defendants/Respondents herein at the date of the judgement.
32. It is further his deposition that eviction notices are not issued by the Court but by the Decree Holder against the Judgement Debtor.
33. The 1st Defendant/Respondent deposes that the Plaintiff/Applicant's accusation labeled against this Court at paragraph 10 of his supporting affidavit sworn on 30th January, 2024 is misleading and only intended to taint this Court's name.
34. The 1st Defendant/Respondent also deposes that the said allegations amount to perjury and attract criminal charges against the Plaintiff/Applicant.
35. The 1st Defendant/Respondent further deposes that the import of the thirty days stay of execution order is to enable the aggrieved party to seek a second opinion from the superior Court and/or plan the next step in regard to the Court's pronouncement and not serve as an eviction notice as alleged by the Plaintiff/Applicant.
36. It is his deposition that he has filed an appeal against the judgement delivered on 2nd November, 2023 in Civil Appeal E005 of 2024 and that the actual ownership of land parcel No. Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/102 is yet to be determined.
37. It is also his deposition that he has lived on the suit property for a period of thirty-four years having entered upon the land in 1990 when their grandmother Ann Chepkemoi Maina and Wilson Kiprono Kenduiywa bought it from Kamosi Clan (the company). He goes on to depose that the land was



bought under tenancy in common with Ann Chepkemoi Maina and Wilson Kiprono Kenduiywa owning 50 and 106 acres respectively.

38. It is his deposition that the land was registered as land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/227 in the name of Wilson Kiprono Kenduiywa to hold in trust for their late grandmother.
39. It is further his deposition that the late Wilson Kiprono Kenduiywa 'turned wild' when their grandmother asked him to partition the land but he later subdivided it without their grandmother's consent.
40. He deposes that land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/227 was subdivided into three parcels of land. The resultant parcel numbers are as follows; Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/201, 202 and 203.
41. He also deposes that no one was allocated the suit properties but the Plaintiff/Applicant's wife purchased land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/202 even though there was no vacant possession as they had been in possession since the year 1990.
42. He further deposes that upon the purchase of the suit property, the parties to the said agreement including the Plaintiff/Applicant's wife sought to take occupation and to unlawfully evict the Defendants/Respondents from land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/203 without any lawful purpose and that there has since been a huge land slide on the said parcel of land.
43. It is his deposition that it is undisputed that their grandmother has a right of ownership over the mother title which was land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/227 that was allegedly illegally subdivided and a portion of it sold to the Plaintiff/Applicant's deceased wife Priscillah Chepkirui Biegon and adds that there was an attempt to relocate them to land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/203 which is not fit for occupation.
44. It is also his deposition that land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/203 is inhabitable and prone to land slides and therefore any attempts to relocate them is unjust and an attempt to deprive them of their legal entitlement.
45. It is further his deposition they have an arguable appeal before the appellate Court and if the orders sought in the application are allowed, their appeal will be rendered nugatory.
46. He ends his deposition by stating that it is the tradition of all Courts that orders are not issued in vain and that the prayers sought by the Plaintiff/Applicant cannot be implemented since there is an appeal pending before the Court of Appeal.
47. None of the parties filed submissions to the application.

Analysis and Determination.

48. Having considered the application and the response thereto, my view is that the following issues arise for determination;
 - a. Whether an eviction order should issue for the Defendants/Respondents to be evicted from land parcel No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba)/202.
 - b. Whether Hegeons Auctioneers should be appointed to carry out the eviction and to attach the Defendants/Respondents movable properties to recover the taxed costs of Kshs. 882, 554/=.
 - c. Who should bear costs of the application.



A. Whether an eviction order should issue for the Defendants/Respondents be evicted from land parcel No. Kericho/Kipkelion Barsiele Block 2 (Kaplabia)/202.

49. The Plaintiff/Applicant is seeking that this Court issues an order of eviction against the Defendants/Respondents herein for them to be evicted from the suit property.
50. The Plaintiff/Applicant submits that the Court in its judgement delivered on 2nd November, 2023 gave the Defendants/Respondents thirty days within which to vacate the suit property failure to which eviction orders would issue.
51. The Plaintiff/Applicant also submits that the period of thirty days has lapsed and since the Defendants/Respondents have not vacated the suit property, eviction orders ought to issue.
52. In response, the Defendants/Respondents admit that the Court granted them thirty days and submit that the said period was for them to appeal to the Court of Appeal.
53. The Defendants/Respondents also submit that the Plaintiff/Applicant, in seeking orders of eviction against them, did not follow the procedure provided for under Section 152E of the Land Act.
54. The Defendants/Respondents further submit that they have appealed against the judgement delivered on 2nd November, 2023 and therefore the orders sought should not be granted.
55. As stated in the preceding paragraphs, this Court delivered judgement on 2nd November, 2023 in favour of the Plaintiff/Applicant. The terms of the judgment are as follows:
 - a. The Defendants herein their servants, agents, employees, representatives, assigns and heirs are herein restrained from encroaching onto, cultivating, grazing animals, cutting down trees and or doing any acts that are detrimental to the Plaintiff's right of quiet and peaceful occupation, possession and use over land No. Kericho/Kipkelion Barsiele Block 2 (Kaplabia) 202 measuring 6.87 Hectares.
 - b. The Defendants shall by themselves and any other person claiming through them vacate forthwith from land parcel LR No. Kericho/Kipkelion Barsiele Block 2 (Kaplabia) 202 within 30 days upon delivery of this judgement and if they fail to so vacate, an order of eviction be issued against them.
 - c. Cost of suit is awarded to the Plaintiff.
56. It is evident that this Court in its judgment, ordered the Defendants/Respondents to vacate the suit property within thirty days of delivery of the said judgement failure to which an eviction order would issue.
57. The thirty-day period has lapsed and the Defendants/Respondents admit that they are still in occupation of the suit property.
58. It is important to note that the thirty-day period was for the Defendants/Respondents to vacate the suit property which is contrary to the Defendants/Respondents argument that the said period was for them to appeal to the Court of Appeal.
59. The Defendants/Respondents argue that they have filed an appeal at the Court of Appeal and therefore this Court cannot issue eviction orders.
60. Order 42 Rule 6(1) of the Civil Procedure Rules provides that no appeal shall operate as stay of execution of a decree or order.



61. It is my view therefore, that even though the Defendants/Respondents allege that they have lodged an appeal at the Court of Appeal, the same does not operate as stay of execution.
62. The Defendants/Respondents also argue that the Plaintiff/Applicant ought to have followed the procedure provided for under Section 152E of the Land Act in seeking for their eviction.
63. Section 152E of the Land Act provides as follows;
- “(1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.
- (2) The notice under subsection (1) shall
- (a) be in writing and in a national and official language;
- (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
- (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
- (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.”
64. In the judicial decision of *Julius L Marten v Caleb Arap Rotich* [2021] eKLR the Court held as follows;
- “Section 152E relating to private land envisages that there is no dispute on ownership and the occupation is unlawful.”
65. It is my view that in the present case the provisions of Section 152E of the Land Act are not applicable. This is because ownership of the suit property was disputed and the Court in its judgement made a determination that the Plaintiff/Applicant is the owner of the suit property and ordered the Defendants/Respondents to vacate the suit land.
66. In the judicial decision of *Shebani & 39 others v Rashid & others* (Land Case 208 of 2013) [2023] KEELC 20216 (KLR) (25 September 2023) (Ruling) the Court held as follows;
- “19. In the case of “*Joseph Nyakundi Orina v Joseph Ambuka* [2019] eKLR” where the application was brought seeking inter alia, an eviction order against the Defendant against whom judgement had been entered but who had refused to vacate the suit property despite being served with a decree to do the same. The Honourable Justice Munyao Sila in granting the orders sought and also ordered the OCS Bondeni Polices Station to provide the Court bailiff/ auctioneer with police escort to effect the eviction. The Judge added that the applicant was entitled to the fruits of the judgment which he would not be able to enjoy if the respondent continued to be in occupation of the suit property.



20. Further, I wish to cite the case of “*Lucy Ghati v Alex Wambura John & another* [2019] eKLR” the application that was brought before the Honourable Court sought inter alia, eviction orders against the Plaintiff/Respondents who, despite Judgment being entered against them and the Applicant following the procedures that were set out in the Judgment had refused to vacate the suit property. The Honourable Court in granting the orders sought said that the Applicant had complied with the judgment and since the judgment had not been set aside, varied or challenged on appeal or at all an eviction order had to be issued.
21. The provision of Article 159 (2) (b) of the [Constitution](#) mandates that justice ought not to be delayed. I agree with the Defendants submissions that the general rule is that the successful party is entitled to the fruits of his judgment on any decision of the Court giving with success at any stage.”

67. The Defendants/Respondents were granted thirty days to vacate the suit property. The thirty-day period has lapsed and they have failed to vacate the land. Further, there is no order of stay of execution against the judgment of this court. I find that the Plaintiff/Applicant is entitled to the fruits of his judgement and an eviction order against the Defendants/Respondents should therefore issue.

B. Whether Hegeons Auctioneers should be appointed to carry out the eviction and to attach the Defendants/Respondents movable properties to recover the taxed costs of Kshs. 882, 554/=.

68. The Plaintiff/Applicant is seeking that Hegeons Auctioneers be appointed to carry out the eviction and to attach the Defendants/Respondents movable properties to recover the taxed costs of Kshs. 882,554/=.
69. In the judicial decision of [Joseph Nyakundi Orina v Joseph Ambuka](#) [2019] eKLR the Court held as follows;
- “2. In this application, the Applicant has averred that the Respondent has already been served with the decree but has failed to vacate the suit premises. I have seen the affidavit of service and I am satisfied that the Respondent was duly served...
4. I therefore allow this application and issue orders of eviction against the Respondent. The said eviction to be conducted either by the Court bailiff or an auctioneer/Court broker, to be appointed by the Applicant. I further direct the OCS, Bondeni Police Station, to provide security to the Court bailiff/auctioneer. The Respondent will shoulder the costs of this application.”

70. I am hesitant in making an order that specifically directs Hegeons Auctioneers to carry out the eviction. What happens if the said auctioneer quits his practice or for whatever reason is incapable or no longer interested is carrying out the eviction? It is prudent to have the Plaintiff/Applicant appoint any auctioneer of his choice including but not limited to Hegeons Auctioneers.
71. The Plaintiff/Applicant is also seeking that the Court appoints Hegeons Auctioneers to attach the Defendants/Respondents movables to recover the costs of Kshs. 882, 554/= as per the Certificate of Costs issued on 19th March, 2024.



72. Order 22 Rule 8 of the [Civil Procedure Rules](#) provides as follows;

“8. Where an application is made for the attachment of any movable property belonging to a judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.”

73. In the judicial decision of [Syrilla A. Barasa & 2 others v Margaret Aseka Barasa](#) [2022] eKLR the Court held as follows;

“24. Therefore, aside from the Civil Procedure Rules 2010 which bind them Auctioneer too must follow the process laid down in the Auctioneer’s Act and the Rules made thereunder. An essential step in this process is that the judgment debtor must have the opportunity to pay the debt and release his property. The steps are:

- (a) Proclamation
- (b) Attachment
- (c) Auction by notice

Each step is distinct and each must take place on a separate date within the timescales set out. The Act and the Rules expressly provide for the judgment debtor to be afforded an opportunity to pay the judgment debt.” [Emphasis Mine]

74. As was held by the Court in [Syrilla A. Barasa & 2 others v Margaret Aseka Barasa](#)(supra), there is a laid down procedure that an Auctioneer must follow in the attachment and sale of a Judgment debtor’s property. That procedure must be strictly adhered to. There is no evidence that the said auctioneers have initiated and/or concluded the said process.

C. Who should bear costs of the application.

75. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the [Civil Procedure Act](#) (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

76. In the circumstances, the Notice of Motion application dated 30th January, 2024 is allowed in the following terms:

- a. An order of eviction is hereby issued against the Defendants evicting them from land parcel No. LR No. Kericho/Kipkelion Barsiele Block 2 (Kaplaba)/ 202 measuring 6.87 hectares as per the judgement of this Honourable Court delivered on 2/11/2023.
- b. The Plaintiff/ Applicant shall appoint an auctioneer of his choice to carry out the eviction.
- c. The OCS Kipkelion Police Station shall give security for execution of the Eviction Order.
- d. The Plaintiff/Applicant shall have costs of this application.

77. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 19TH DAY OF SEPTEMBER, 2024.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Koko for the Plaintiff/Applicant.

Defendants/Respondents- Absent

Court Assistant; Mr. Joseph Makori.

