



REPUBLIC OF KENYA



**Njoroge & 8 others v Koruta (Environment & Land Case 636 & 207 of 2015
(Consolidated)) [2024] KEELC 5907 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5907 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 636 & 207 OF 2015 (CONSOLIDATED)
MN GICHERU, J
SEPTEMBER 18, 2024
(FORMERLY MACHAKOS ELC 189/2015)**

BETWEEN

**BENARD AND NJOGU NJOROGE 1ST PLAINTIFF
MARY WANJIKU NJUGE 2ND PLAINTIFF
PETER M. KARIUKI 3RD PLAINTIFF
MARTHA WANJIKU 4TH PLAINTIFF
GIVERN WANJALA 5TH PLAINTIFF
BILLY JOSEPH LENANA NGAAGI 6TH PLAINTIFF
LUCY KANYI NJOMO 7TH PLAINTIFF
DENNIS NJOROGE 8TH PLAINTIFF
RACHAEL MUTABARI (SUING FOR AND ON BEHALF OF HUMILITY
MINISTRIES) 9TH PLAINTIFF**

AND

KASAINO OLE KORUTA DEFENDANT

RULING

1. This ruling is on the notice of motion dated 24/9/2021. The motion which is by the defendant/applicant seeks the following residual orders.
2. That this court do issue an eviction order directed to the plaintiff/respondents, their servants, agents and/or any other persons whatsoever in occupation of the property known as Kajiado/Noonkopir township/214.



3. The OCS Kitengela Police Station or the officer in charge of the nearest police station do oversee the enforcement of the eviction order.
 4. That the plaintiffs/respondents be ordered to pay the costs of the eviction exercise that may be incurred by the defendant/deed holder.
2. The motion which is brought under Sections 1A, 1B and 3A of the *Civil procedure Act*, Orders 22 rule 29 and 51 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law is based on nine (9) grounds. It is also supported by an affidavit sworn by the applicant dated 24/9/2021, a supplementary affidavit dated 8/2/2022 and 12 (twelve) annexures.

The gist of the above material is as follows. Firstly, the applicant is the successful litigant in the suit whose judgment was delivered on 3/2/2020 whereby the plaintiffs were ordered to give the defendant vacant possession of the suit land. Secondly, the 90 days within which the respondents were required to vacate the suit land have long expired. Thirdly, the respondents have refused to vacate voluntarily making the filing of this application necessary. Fourthly, there is no order of stay of execution from this Court or the Court of Appeal hence the applicant should not be hindered in the enjoyment of the fruits of his judgment.

For the above and other reasons, he seeks for the orders in the motion.

3. The motion is opposed by the respondents and the 1st respondent, Rachael Mutabari has sworn a replying affidavit on their behalf dated 27/11/2021 in which she responds as follows. Firstly, the applicant has failed to disclose that there is a pending appeal which is No. 194 of 2020 at the Court of Appeal in Nairobi where the Court of Appeal has delayed in issuing orders of stay of execution. Secondly, it would be a miscarriage of justice to evict the respondents before the appeal is concluded.

In addition to the replying affidavit, there is a preliminary objection dated 27/11/2021 based on the following grounds.

- i. The application offends Section 6 of the *Civil Procedure Act*.
- ii. There is a valid appeal case awaiting ruling after parties filed written submissions and it cannot be wished away.
- iii. The application is in breach of mandatory procedure and the same cannot see the light of the day.
- iv. Since the Court of Appeal has not decided on the pending application, there is no way that this court can make a ruling that could possibly contradict the decision of the appellate court.

For the above and other reasons, the respondents pray for the dismissal of the applicants' application.

4. Counsel for the applicant filed written submissions dated 8/2/2022 and identified the following one issue for determination.
- i. Whether the respondents ought to be evicted from the suit land.

At the time of writing this ruling in late July, I had not seen the respondent's written submissions. I find that the single issue identified by the applicants' counsel will determine the dispute. I find that the respondents ought not to be evicted from the suit land for the following reasons.

5. Firstly, it is more than 4 ½ years since judgment was delivered in this case. It is also more than 4 years since Appeal No. 194 was filed at the court of appeal. The last affidavit in this case is dated 8/2/2022 which is more than 2 ½ years ago. This court does not know the latest status of the Court of Appeal



case. This court is therefore flying blind as to what the Court of Appeal may have decided in the intervening period. It would be improper to make any order that would contradict an order made by the higher court.

6. Secondly, it is now too late to order that the respondents be evicted from the suit land more than 4 ½ years since judgment was delivered and when there is a pending appeal. The applicant has nothing to lose since the subject matter is immovable property which will be available at the end of litigation. The respondents should be let to exhaust all the available avenues of redress and be evicted only if their pending appeal is not successful.

For the above stated reasons, I dismiss the notice of motion dated 24/9/2021. Costs in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 18TH DAY OF SEPTEMBER 2024.

M.N. GICHERU

JUDGE

