



Mbugua v Mbugua alias Sammy George Ngari (Environmental and Land Originating Summons E009 of 2023) [2024] KEELC 7351 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7351 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E009 OF 2023
MD MWANGI, J
OCTOBER 31, 2024**

BETWEEN

JULIUS MACHUA MBUGUA PLAINTIFF

AND

SAMMY NGARI MBUGUA ALIAS SAMMY GEORGE NGARI DEFENDANT

RULING

(In respect to the Defendant's application dated 16th July, 2024 seeking the eviction of the Plaintiff and anyone claiming through him from the suit properties and demolition of all structures therein)

Background

1. This suit was instituted by the Plaintiff herein by way of Originating Summons (OS) dated 16th February, 2023. The Plaintiff was seeking orders that he was entitled to be registered as proprietor of the suit properties, parcels of land known as L.R No. Dagoretti/Riruta/ 8825/6/7/8 in place of the Defendant herein pursuant to the provisions of Section 38 of the Limitations of Actions Act. The Plaintiff's case was based on the premises that he took physical possession of the parcels of land on 28th July, 2000 and has remained therein in open, peaceful and uninterrupted occupation to the date of filing suit which was a period exceeding twelve (12) years preceding the filing of the Originating Summons.
2. On the consideration that the Plaintiff and the Defendant were brothers; this matter was referred to court annexed mediation where it was successfully mediated resulting in the mediation agreement dated 14th March, 2024. The mediation agreement was adopted as a judgment of this court on 09th May 2024.
3. The application now before me is by the Defendan seeking the eviction of the Plaintiff from the suit properties pursuant to the aforesaid judgment of the court.



4. The Defendant/Applicant in his submissions in support of the application asserts that the Plaintiff's continued occupation of the suit properties after the Mediation agreement is an affront to justice and a violation of his constitutional right to property.
5. In spite of service, the Plaintiff did not respond to the application.

Issues for Determination

6. The sole issue for determination in this instance is whether the Defendant's application is merited.

Determination

7. The Defendant's application though not expressly stated, is essentially an application for execution of a 'Decree' under the provisions of Order 22 rule 29 of the Civil Procedure Rules. The judgment emanating from the mediation settlement agreement is for delivery of immovable properties in favour of the Defendant against the Plaintiff.
8. The Defendant has however missed one critical step. He is yet to extract a Decree, 'the formal expression of the adjudication', to enable him invoke the court's powers under Section 38 of the Civil Procedure Act.
9. Under Section 38 of the Civil Procedure Act, the court may only act and order execution of a Decree, on an application by a Decree-holder.
10. For avoidance of any doubt, a decree-holder means 'a person in whose favour a decree has been passed or an order capable of execution has been made'. The mediation settlement agreement as presented and filed in this case is incapable of execution. It requires to be converted into a decree of this court.
11. That said, the Defendant's application dated 16th July, 2024 is premature. It is hereby struck out with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2024.

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Ms. Irungu h/b for Mr. Ngata Kamau for the Plaintiff/Respondent

Mr. Njogu h/b for Mr. Karanja for the Defendant/Applicant

Court Assistant: Yvette

M.D. MWANGI

JUDGE

