



**Kabera v Mwangi & 3 others (Environment & Land Case
241 of 2021) [2024] KEELC 7187 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7187 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 241 OF 2021**

**JA MOGENI, J
OCTOBER 29, 2024**

BETWEEN

PATRICK KIGUNYA KABERA PLAINTIFF

AND

GRACE WANJIRU MWANGI 1ST DEFENDANT

JOHN NJUGUNA NJUKU 2ND DEFENDANT

MESHACK MUGO KIMANI 3RD DEFENDANT

DAVID KAMANDE MUNGAI 4TH DEFENDANT

RULING

1. The matter for determination is the 2nd Defendant's/Applicant's Notice of motion application dated 1/02/2024, brought under various provisions of law and has sought the following orders: -
 1. That the Court be pleased to direct the Plaintiff to immediately grant vacant possession of the suit premises parcel of land title number Juja/Juja East/Block 1/253.
 2. That the Court be pleased to issue orders of eviction and demolition of any structures that are on the suit premises parcel of land title number Juja/Juja East/Block 1/253
 3. That the OCS Witeithie Police Station does assist in enforcing the orders of the Court.
 4. That Court be pleased to order the Plaintiff to meet the costs of eviction and demolition as well as for this application.
2. This application is premised upon the grounds stated in the Supporting Affidavit of John Njuguna Njuku, the 2nd defendant in the suit.



3. In his Supporting Affidavit, John Njuguna Njuku, averred that this Honorable Court delivered its judgment on the 17/05/2022 and confirmed the ownership of the suit premises as belonging to the 2nd defendant in the presence of the advocate for the plaintiff.
4. That the judgment granted the Plaintiff 30 days to vacate the suit premises but one and half years later he has failed to comply with the court judgment. No appeal or review has been filed in respect of the said judgment.
5. It is the Applicant's contention that litigation must come to an end. Thus the applicant seeks to end the litigation through the orders sought herein. The applicant avers that the plaintiff continues to act in contempt of the Court's ruling. Further that the 1st defendant has also constructed a semi-permanent structure on the suit premises which needs to be demolished.

Analysis and Determination

6. On 12/06/2024, while all the parties were present in Court, they were directed to have the Notice of Motion application dated 1/02/2024 be disposed of by way of written submissions. From the records, it was only the Defendant/Applicant who complied and filed their submissions dated 1/07/2024. The court also reserved a date for the ruling.
7. I have read and carefully considered the pleading and annexed evidence. The only issue for determination is whether an eviction order should issue against the plaintiff in respect to the land parcel number Juja/Juja East Block 1/253.
8. It is not in dispute that this Court already pronounced itself in a judgement in favour of the 2nd, 3rd and 4th defendants/ applicant. I will proceed to reproduce hereunder the final orders of the impugned judgement:
 - a. The sale agreement dated 25/10/1995 between the plaintiff and 1st defendant over the land parcel Juja/Juja East Block 1/253 cannot be enforced for want of a valid consent of the Land Control Board the said agreement is hereby declared to be null and void
 - b. The plaintiff's remedy is to claim a refund of the money paid under the transaction, but this court is unable to make any determination on this point as no evidence was tabled on the exact amount of money was paid under the transaction. The plaintiff is at liberty to file a separate claim for this and the claim if and when filed will be determined on its merits
 - c. An order is hereby made of injunction permanently restraining the plaintiff from interfering with the 2nd, 3rd, and 4th defendants' quiet possession of parcel land No. Juja/juja East Block 1/253
 - d. The 2nd, 3rd and 4th defendants are entitled to vacant possession of the suit property Juja/Juja East Block 1/253 and I order the plaintiff to vacate the suit land within 30 days from the date hereof. In default, the defendants are at liberty to apply for an order of eviction
 - e. There shall be no order as to costs.
9. I note since the Judgement was delivered on 17/05/2022, the plaintiff has not given the applicants vacant possession of the suit land. The 1st Defendant claims the orders sought for eviction cannot be granted since the court is functus officio. Order 22 Rule 29 (1) of the *Civil Procedure Rules* provides that: 'Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on



his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.’

10. In *Menginya Salim Murgani v Kenya Revenue Authority* [2014] eKLR the Supreme Court of Kenya held that: “It is a general principle of law that a Court after passing Judgment, becomes functus officio and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.”
11. In this instance there exists a judgment against the plaintiff to offer vacant possession of the suit land to the applicants which he has declined to adhere to. To my mind I find that the only remedy that is available to the applicants is to seek eviction orders in accordance with Order 22 Rule 29 (1) of the *Civil Procedures Rules* cited above.
12. The court in delivering its judgment stated that the 2nd, 3rd and 4th defendants were at liberty to apply for an order of eviction if the plaintiff was not going to honor the court order.
13. It is against the foregoing that I find the application dated 01/02/2024 merited and I allow it. I will proceed to make the following final orders:
 1. That an eviction order be and is hereby issued directed to the plaintiff, his servants, agents and or any other persons whatsoever in occupation of the property and demolition of any structures that are on the suit premises known as parcel of land title number Juja/Juja East Block 1/253
 2. That the OCS Witeithie Police Station do oversee the enforcement of the said eviction order
 3. That the plaintiff is hereby ordered to pay the costs of the eviction exercise that may be incurred by the applicant.

It is so ordered

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS DAY 29TH DAY OF OCTOBER, 2024.

MOGENI J

JUDGE

In the virtual presence of: -

Ms. Wangu Kariuki for Applicant/Respondent

No appearance for Plaintiff/Applicant

Caroline Sagina - Court Assistant

