



Khamisi & another v Mwamure (Enviromental and Land Originating Summons 41 of 2015) [2024] KEELC 6949 (KLR) (23 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 41 OF 2015
FM NJOROGE, J
OCTOBER 23, 2024**

BETWEEN

AMRI KHAMISI 1ST PLAINTIFF

OMARI KHAMISI 2ND PLAINTIFF

AND

SYLVESTER CHIBO MWAMURE DEFENDANT

RULING

1. This court delivered a judgment in this matter, in favour of the plaintiffs on 16/7/21. On 30/8/24, the 1st plaintiff lodged an application for eviction orders against the respondent so as to obtain vacant possession. I have examined the affidavit of service of the application. It is dated 19/9/2024 and is sworn by one John Kombe a process server. It states that service was by way of sending the application to the last known address of the respondent. The court had not issued any order of substituted service prior to that act of service by post. The court was not aware that the respondent could not be personally served with the application. Service by post without an express order of this court is improper service. Substituted service of process is only allowed in instances where the court has granted leave. Consequently, though this court had reserved the matter for a ruling on the application dated 26/8/2024, the contents of the affidavit of service demand that it can not now shut its eyes to the possibility that the person intended to be evicted is in occupation of the suit property and may be ambushed by the eviction party without having been given any advance knowledge of the application and eviction order by way of personal service of the application. Consequently, I hereby defer the ruling that was reserved for today and in lieu thereof, I order that the respondent and every person in occupation of the suit property shall be service for the hearing of the motion before a ruling thereon is issued. That course of action has to be undertaken since the possible consequences of the issuance of such an order are dire. I must also indicate that the necessity for an eviction order arises only where the respondent does not voluntarily comply with a decree ordering vacant possession and directed at him,



and not where after he has been served with a decree he has either vacated or sought for a fixed time frame to remove himself and his assets from the premises. Forcible evictions are a necessary evil. They occasionally result in destruction of property or worse consequences. This is more so when the eviction is unexpected. The court must always exercise abundant caution so as to avert unnecessary hardship on a respondent who had no desire to resist a court order directing that he gives vacant possession. For that reason, I defer the ruling and I order that all persons in occupation of the suit land whether as agents of or otherwise claiming under the respondent, or on their own accord, must be served with the application personally after which the application shall be heard. The motion shall be listed for hearing on 10/12/2024 by which date the applicant must have filed an affidavit of service indicating that the occupants have been served as directed.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 23RD
DAY OF OCTOBER 2024.**

MWANGI NJOROGE

JUDGE, ELC, MALINDI

