



Onchiri (Suing as legal representative of Onchiri Kegeni) v Momanyi (Environment & Land Case 1195 of 2016) [2024] KEELC 13217 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 1195 OF 2016**

M SILA, J

NOVEMBER 18, 2024

BETWEEN

LAWRENCE MOSE ONCHIRI (SUING AS LEGAL REPRESENTATIVE OF ONCHIRI KEGENI) PLAINTIFF

AND

TOM MOMANYI DEFENDANT

RULING

1. The application before me is that dated 1st August 2024 filed by the plaintiff/decree holder. The applicant seeks an order of eviction against the defendant/respondent, his agents, servants and/or anybody claiming under him, from the land parcel Nyaribari Chache/Birongo/543 (the suit land). The applicant further seeks an order to have the OCS, Keumbu Police Station, provide security during the eviction exercise. Despite being served the respondent has filed nothing to oppose the application.
2. I have gone through the record. The applicant is legal representative of the late Onchiri Kegeni (the original plaintiff, who is now deceased). Through a plaint filed on 14 September 2010, the original plaintiff pleaded that he is the proprietor of the suit land and that the respondent has trespassed into it. He asked for an order of vacant possession. The respondent filed defence where he denied that the original plaintiff was the registered proprietor of the suit land and also denied trespassing therein. It emerged in the course of the trial that the respondent's interest may lie in the land parcel Nyaribari Chache/Birongo/347, which abuts the suit land, and an order to survey the two parcels was made. The survey returned the report that the two parcels of land are distinct and that the respondent was occupying the land of the applicant. The respondent however disputed the report and the matter proceeded for hearing. In my judgment delivered on 14 February 2024, I entered judgment for the applicant. I gave the respondent 30 days to give vacant possession or be he evicted. I also awarded the applicant general damages in the sum of Kshs. 500,000/= together with the costs of the suit.



3. In this application, the applicant complains that the respondent has not vacated and continues to work on the suit land and that he has also not paid the monetary award of Kshs. 500,000/=. As I earlier mentioned, the respondent has not filed anything to oppose this application. I have no reason to decline it as there is already judgment in favour of the applicant which orders the respondent to give vacant possession. The 30 day period given to the respondent to give vacant possession lapsed a long time ago.
4. Given the foregoing, I allow this application. I issue an order for the eviction of the respondent from the suit land. The applicant is at liberty to appoint a court broker of his choice to execute the order of eviction. I further order the OCS, Keumbu Police Station, to provide security during the eviction exercise. The respondent will pay the costs of this application and any costs associated with the eviction exercise.
5. Orders accordingly.

DATED AND DELIVERED THIS 18 DAY OF NOVEMBER 2024.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

**In the presence of: -

Mr. Anyona present for the plaintiff/applicant

M/s Angima Omagwa for the respondent – Absent

Court Assistant - David Ochieng'

