



**Odhiambo v Ogola & 2 others (Environment & Land Case E043 of 2022)
[2024] KEELC 13196 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13196 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E043 OF 2022**

JA MOGENI, J

NOVEMBER 14, 2024

BETWEEN

JOAN OWIRA ODHIAMBO PLAINTIFF

AND

JANE ABOGE OGOLA 1ST DEFENDANT

BENSON ODHIAMBO ORIEDO 2ND DEFENDANT

NAIROBI COUNTY GOVERNMENT 3RD DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated 16/05/2024 brought pursuant to Order Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#). The Plaintiff seeks the following orders:
 1. That this Honorable Court do grant leave to the Plaintiff to forthwith evict the defendants, their agents, servants and any other person claiming a right under the defendants herein from the suit property being LR No. C6-219 in Kayole.
 2. That this Honorable Court do order the OCS Soweto Police station to enforce the orders sought herein.
 3. That the costs and expenses occasioned by and incidental to the Plaintiff's entry and repossession of the suit premises be borne by the Defendants.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Joan Owira Odhiambo where she explains that judgement was delivered on 12/10/2023 in favour of the plaintiff in the presence of all parties. The court issued an order for permanent removal of the building structures on the suit property. She contends that all subsequent applications that have been made by the 1st defendant to vary and or stay the execution of the judgment have been dismissed. That despite a written



- demand dated 2/12/2023 having been served on the defendants they have refused to vacate the suit property. She annexed a copy of the demand marked as JOO1 to the Supporting Affidavit.
3. She avers that the 2nd Defendant has stationed goons on the suit property and continues to collect rent and has prevented the plaintiff from accessing the suit property. This led to the plaintiff reporting the issue to Soweto Police Station. A copy of the OB is annexed to the Supporting Affidavit and marked as JOO2.
 4. He seeks eviction, since there are no orders of stay against the judgement since its delivery. She reiterates that eviction orders should issue and the Officer Commanding Station (OCS) Soweto Police Station to supervise it.
 5. The 1st and 2nd Defendants filed a Replying Affidavit sworn on 14/06/2024 where they allege that the applicant is not entitled to prayers of eviction since they did not seek these prayers in their plaint dated 3/02/2022 nor was the same ordered vide this Court's Judgment dated 12/10/2024. Further, that if the Court entertains the Plaintiff's Application, it will result in re-opening of a matter before this Court which has already rendered the final decision.
 6. It is also their contention that they have already filed an appeal against this court's decision vide Nairobi Civil Application No. E257 of 2024 seeking stay and the suit application was certified as urgent and a hearing date shall be communicated. 1st defendant denies that the 2nd defendant has placed any goons on the suit property and avers that the son of the applicant is the one who has driven out tenants and is collecting rent.
 7. None of the parties filed their submissions to canvass this application by the time I was writing this ruling.

Analysis and Determination

8. Upon consideration of the Notice of Motion Application dated 16/05/2024 including the supporting affidavit as well as the Replying Affidavit sworn on 14/06/2024, the only issue for determination is whether an eviction order should issue against the 1st and 2nd Defendants in respect to plot C6-219.
9. It is not in dispute that this Court already pronounced itself in a judgement in favour of the Plaintiff. I note since the Judgement was delivered on 12/10/2023 the 1st and 2nd Defendants have not given the Plaintiff vacant possession of the suit land. The 1st Defendant claims the orders sought for eviction cannot be granted since the plaintiff did not seek for eviction in her plaint. 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 Decree against the 1st and 2nd Defendants for permanent removal of the building structures on the suit property and compensation for loss of user. It follows that the court indeed the plaintiff should be utilizing their land as a result of the decision but the 1st and 2nd



defendants have declined to adhere to the judgement. They claim to have lodged an Appeal against the said Judgement which they await determination by the Court of Appeal. To my mind I find that the only remedy that is available to the Plaintiff is to seek eviction orders in accordance with Order 22 Rule 29 (1) of the Civil Procedures Rules cited above. I hence disagree with the 1st and 2nd Defendants that the Plaintiff did not seek eviction orders in her pleading and that this is a new claim and is tantamount to reopening the suit. This application only sought to give effect to the impugned judgement which final orders are clear and the application has not invited this court to make any further determination of an issue in dispute.

12. It is against the foregoing that I find the application dated 16/05/2024 merited and allow it. I will proceed to make the following final orders:

1. An eviction order be and is hereby issued directed to the 1st and 2nd Defendants, their servants, agents and/ or any other persons whatsoever in occupation of the property known as C6-219.
2. The Officer Commanding Station (OCS) Soweto Police Station or the officer in charge of the nearest Police Station do oversee the enforcement of the said eviction order.
3. That the 1st and 2nd Defendants be and are hereby ordered to pay the costs of the eviction exercise that may be incurred by the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

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MOGENI J

JUDGE

In the Virtual presence of; -

Mr. Orondo Tuli for the Plaintiff/applicant

Mr. Ochieng holding brief for Sc. Prof. Mumma for 1st Defendant and 2nd

Defendant

Ms. Irine Ochieng holding brief for Mr. Bake for 3rd Defendant

Caroline Sagina - Court Assistant

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MOGENI J

JUDGE

