



REPUBLIC OF KENYA



**Alfred GML v Sheunda (Environment & Land Case 85 of 2019)
[2025] KEELC 519 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 85 OF 2019
A NYUKURI, J
FEBRUARY 12, 2025**

BETWEEN

DR SHIROYA ALFRED GML PLAINTIFF

AND

ELIAKIM MASAHA SHEUNDA DEFENDANT

RULING

Introduction

1. Before court is a Notice of Motion dated 24th May, 2024 filed by the plaintiff seeking the following orders;
 - a. That this Honourable Court be pleased to issue orders of eviction against the Respondents, his servants, agents or any other person under his authority from land parcel No. N/wanga/namamali/985 and to deliver vacant possession to the applicant herein.
 - b. That this Honourable Court be pleased to issue an order of permanent injunction restraining the Respondent, his servants, agents or any other person under his authority from using, alienating or interfering in any way whatsoever with land parcel number N/wanga/namamali/985.
 - c. That the eviction order be executed/effected by the Court Bailiff under the O.C.S Harambee Police Station supervising and providing security.
 - d. That the Respondent to shoulder the costs of the instant application and all the costs that the applicant incurs in executing the eviction order.
2. The application is premised on the grounds on its face as well as the supporting affidavit of Alfred G.M.L Shiroya, the applicant sworn on 24th May, 2024. The applicant's case is that on 9th December, 2020, this court entered judgment in his favour and ordered the respondent to vacate the suit property



in 60 days and in default he would be evicted. Further that the court made declaratory orders in his favour.

3. He further stated that the Respondent had refused to comply with the judgment and has started planting crops on the suit property while using violence.
4. The application is opposed. Eliakim Masaka Sheunda the respondent herein filed replying affidavit dated 26th November, 2024 opposing the application. He stated that the application is untenable, misdirected and full of falsehoods. He further stated that he is a beneficiary of the suit property and that the same is held by the applicant in trust for him and his brother Moses Indokhomi. That his brother sold the land without his consent and that the applicant failed to recognize his occupation on the land. He also stated that he had extensively developed his share by building a dwelling house and cultivating various crops and that he is entitled to the land by adverse possession.
5. The applicant filed submissions dated 18th October, 2024, which this court has duly considered.

Analysis and Determination

6. The court has carefully considered the application herein, the response thereto and the applicant's submissions. The issue that arise for this court's determination is whether the applicant has demonstrated that he is entitled to the orders sought of eviction, permanent injunction and police security during eviction.
7. It is not in dispute that there is a judgement on record which was made on 9th December, 2020 declaring that the respondent herein is not entitled to enter, remain on or use the suit property. In addition, in that judgement, the respondent was ordered to vacate the suit property within 60 days and in default eviction orders are to issue.
8. From the response filed by the respondent it is clear that he has not complied with the judgment as he is still on the suit property over four years after delivery of the same when he was supposed to have left the suit property by 9th February, 2021. The issues raised by the respondent that he is entitled to the suit property by the doctrines of trust and adverse possession were adjudicated upon and thereafter judgment entered by this court and therefor this court is functus officio in so far as the same is concerned.
9. This court ordered that the respondent was to vacate the suit property in 60 days from 9th December, 2020 and in default eviction orders to issue. As the respondent has not complied with the 60 days' period to vacate the suit property. It therefore follows that the applicant is entitled to orders of eviction as sought.
10. Regarding the prayer that the OCS provides security during eviction, I am satisfied that the applicant is entitled to the same as the respondent has not denied using violence to continue in the violation and disobedience of the judgment.
11. On the prayer for Permanent Injunction, I note that the same is a substantive prayer, which was not granted in the judgment.
12. The Black's Law Dictionary 11th Edition defines "functus officio" as follows;

"Latin "having performed his or her office". (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished"



13. This court has already determined the dispute herein and what remains is the execution of the judgment. Therefore, the court has already discharged its mandate fully in so far as the dispute herein is concerned and a prayer for a permanent injunction constitutes a fresh claim, which this court at this stage has no power to grant. Therefore, this court is functus officio in regard to the prayer for permanent injunction, which prayer the court cannot determine or grant.
14. The respondent's failure to vacate the suit property will occasion expenses on the part of the applicant in terms of eviction expenses. Therefore, the applicant is entitled to costs of this application and the costs of the eviction to be borne by the respondent.
15. In the premises, I allow the application dated 24th May, 2024 in the following terms;
 - a. That eviction orders are hereby issued against Eliakim Masaka Sheunda, the respondent herein, his servants, agents or any other person under his authority from Land Parcel no. N/Wanga/Namamali/985 and vacant possession thereof be delivered to the applicant Alfred G.m.l. Shiroya.
 - b. The eviction order herein shall be executed by the Court Bailiff and the O.C.S Harambee Police Station is directed to supervise and provide security during the eviction process.
 - c. The costs of the eviction and the costs of the application herein shall be borne by the respondent.
16. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 12TH DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Ombitsi holding brief for Ms Nechesa for the applicant

No appearance for the respondent

Court Assistant: M. Nguyai

