



Kambura (Suing as the Legal Representative of Estate of Norman Ntongai alias Ntongai Ambu) v Kirema & 3 others (Environment & Land Case 50 of 2018) [2024] KEELC 13859 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13859 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 50 OF 2018
CK YANO, J
DECEMBER 19, 2024**

BETWEEN

ALICE KAMBURA (SUING AS THE LEGAL REPRESENTATIVE OF ESTATE OF NORMAN NTONGAI ALIAS NTONGAI AMBU) PLAINTIFF

AND

EVANGELINE GATTU KIREMA 1ST DEFENDANT

JOSEPH BUNDI 2ND DEFENDANT

DIRECTOR OF SURVEYS 3RD DEFENDANT

THE HON. ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Before me for determination is a notice of motion dated 26th September, 2024 brought pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#) and all other enabling provisions of the law. The 2nd defendant/applicant seeks the following orders-;
 1. Spent
 2. That the Honourable court do issue an order of eviction evicting the plaintiff/respondents herein from the 2nd defendant’s plot No. Kianjai/Kianjai/7772 measuring 0.5 acres to give effect to the Honourable court’s judgment issued on 4th April 2024.
 3. That this Honourable court be pleased to issue an order for security directing the Officer Commanding Station (OCS) Nchiru Police Station to provide security to the County Surveyor and the plaintiff(sic) applicant during the implementation of the judgment of this court issued on 4th April 2024.



4. That this Honourable court be pleased to issue such other and/or better orders as may meet the ends of justice.
2. The application is based on the grounds on the face of it and is supported by the affidavit of Joseph Bundi sworn on 26th September, 2024. The applicant avers that vide the judgment of this court dated 4th April 2024, the Honourable court directed the plaintiff to vacate the 2nd defendant's plot No. Kianjai/Kianjai/7772 measuring 0.5 acres. That on several occasions, the applicant has accompanied the County Surveyor to the ground for implementation of the said judgment, but they were met with violent resistance by the plaintiff/respondent who hired armed goons to harm them.
3. The applicant avers that in order for the County Surveyor to carry out his legal mandate, he has insisted that he be supplied with adequate security, hence this application. That it is in the interest of justice that the orders herein are sought. That no prejudice will be occasioned to the respondent as he has exhausted all avenues of redress.
4. The application is opposed by the plaintiff/respondent vide a replying affidavit dated 8th November, 2024. She avers that she is the owner of land parcel No. Kianjai/Kianjai/7768 wherein she has lived since the year 1983. A copy of the certificate of official search has been annexed.
5. The respondent avers that she filed this suit following interferences on her said land by the applicant who bought a portion of land from the 1st defendant and not the respondent. That the applicant, however, did not file a counter-claim so that the court could determine his claim that his portion is on the respondent's land.
6. It is the respondent's contention that the orders sought by the applicant have no foundation since the court did not make any determination that the applicant's portion is on the respondent's land and that the respondent is in occupation of the applicant's land. That the orders sought are an attempt by the applicant to evict the respondent from her land through the backdoor.
7. Relying on legal advice the respondent states that eviction orders can only be issued after due compliance with the statutory requirements set out in the law which requirements and procedure have not been complied with. The respondent contends that the application herein is incompetent and without merit and prayed for the same to be dismissed with costs.
8. I have considered the application and the response. The issues for determination are whether the application has merit and whether the orders sought can be granted. The main prayers sought by the 2nd defendant/applicant are orders of eviction and provisions of security during the implementation of the orders of eviction.
9. The plaintiff/respondent instituted this suit vide a plaint dated 4th December, 2018 which was amended on 29th September, 2021. The main reliefs sought by the plaintiff against the defendants were a permanent injunction restraining them from entering, invading, trespassing, encroaching, curving out, sub-dividing or in any manner whatsoever dealing with or interfering with the plaintiff's ownership, occupation and possession and use of land parcel No. Kianjai/Kianjai/7768 and an order directing the Director of Surveys to correct or amend the maps involving the ground location of the said land. The defendants denied the plaintiff's claim and filed their respective statements of defence. Thereafter, the matter proceeded for hearing and in its judgment delivered on 4th April, 2024, the court found that the plaintiff had not proved her case on a balance of probabilities. Consequently, the plaintiff's suit was dismissed with costs to the defendants. The 2nd defendant/applicant has now filed the instant application seeking the orders of eviction of the plaintiff from plot No. Kianjai/Kianjai/



7772 allegedly to give effect to the honourable court's judgment delivered on 4th April 2024 and an order for provision of security during the implementation of the said judgment.

10. I have seen the pleadings filed herein and the judgment delivered by this court on 4th April 2024. There were no positive orders made in favour of the defendants save for costs. None of the defendants, including the 2nd defendant/applicant herein filed a counterclaim. Indeed, there was no prayers made by this court in respect of land parcel No. Kianjai/Kianjai/7772, let alone an order of eviction of the plaintiff from the said land.
11. In as much as the plaintiff's suit was dismissed, and there being no positive orders issued in favour of the 2nd defendant in respect of parcel No. Kianjai/Kianjai/7772 because as I have stated, there was no suit or counterclaim for eviction filed, the application herein cannot succeed since it is in no way meant to implement the judgment of the court as no orders of eviction were issued by the court. Any eviction order has far reaching implications as it entails the forceful removal of a party from land he/she is in occupation/possession. Before such an order is given, the court must be satisfied on its merits which means any person who stands to be affected by the order of court may make is entitled to be heard. (see Julius L. Marten Vs Caleb Arap Rotich [2021] eKLR). If at all there is no dispute over the ownership of land parcel No. KIANJAI/KIANJAI/7772 in my considered view, the applicant herein ought to have invoked the clear provisions of the law and issue notice as stipulated in Sections 152A to 152H of the Land Act. Further, the 2nd defendant/applicant could have filed a counterclaim or even a separate suit to enable the court determine the issue whether or not the order of eviction against the plaintiff from land parcel No. KIANJAI/KIANJAI/7772 can issue. In my view, the applicant cannot seek the orders sought by way of an application of a suit which never determined ownership of that land, and in which no positive orders were issued in the judgment. Where a person seeks to enforce a civil action, he/she needs to follow the prescribed provisions of the law to enable a court determine whether to grant the orders sought or not. In this case, the applicant, has not adhered to the provisions of both the Civil Procedure Act (of instituting a suit or counterclaim) or the Land Act (in issuing a proper notice as stipulated in Sections 152A to 152H).
12. Consequently, I find that the notice of motion application dated 26th September, 2024 is devoid of merit and the same is dismissed with costs to the plaintiff/respondent.
13. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF DECEMBER, 2024

IN THE PRESENCE OF

Court Assistant – Tupet

Omari for 2nd defendant/applicant

Kariuki for plaintiff/respondent

C.K YANO

JUDGE

