



**Njiiru (Acting as the Legal Representative of the Estate of M’Ncheeru
M’Rutere (Deceased)) v Muthuri (Environment & Land Case
136 of 2017) [2024] KEELC 14008 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14008 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 136 OF 2017
CK YANO, J
DECEMBER 19, 2024**

BETWEEN

**ROSE NJIRU PLAINTIFF
ACTING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF
M’NCHEERU M’RUTERE (DECEASED)**

AND

JOHN NICHOLAS MUTHURI DEFENDANT

RULING

1. This ruling relates to a notice of motion application dated 16th January, 2024, said to be brought pursuant to Order 22 Rule 29 of the Civil Procedure Rules and Sections 1A and 1B of the [Civil Procedure Act](#). The defendant/applicant is seeking for orders that:-
 1. Spent
 2. Clear Real Traders be authorized to execute the decree herein by evicting the plaintiff/Judgment-debtor from land parcel No. KIIRUA/NKANDO/676 and putting the judgment-creditor in possession thereof.
 3. The Officer commanding Kathare Police station in Buuri East sub County be authorized and empowered to provide security to Clear Real Traders in executing this Honourable court’s decree issued on 29th August, 2018 and supervise eviction of the plaintiff/judgment-debtor from land parcel number KIIRUA/NKANDO/676 and the taking of possession thereof by the judgment -creditor.
 4. This Honourable court be pleased to make such further or better orders as may be expedient.
 5. Costs be provided for



2. The application is supported by the affidavit of John Nicholas Muthuri, the applicant herein, sworn on 15th January, 2024, and is premised on the grounds that the judgment-debtor has completely refused and failed to comply with the terms of this Honourable court's decree, that it is necessary that this Honourable court's decree be executed, and that it is only fair and just that the orders sought be granted.
3. The applicant avers that this suit was determined on 29th August, 2018 when the plaintiff's claim was dismissed and judgment entered in terms of the defendant's counter-claim. A copy of the decree marked 'JNM 1' has been annexed. The applicant states that the said decree required the plaintiff/judgment-debtor to be evicted from the applicant's land parcel No. Kiirua/Nkando/676 and the judgment-debtor was also permanently enjoined from interfering with the said land.
4. That being dissatisfied with the said decree, the plaintiff lodged Civil Appeal Number 232 of 2018 before the Court of Appeal at Nyeri which appeal was heard and by a judgment delivered on 22nd September, 2023, the appeal was dismissed with costs. A copy of the said judgment marked "JNM II" has also been annexed. The applicant states that following the dismissal of the plaintiff's appeal, the plaintiff was obliged to fully comply with the decree of this court, but has willfully refused to obey the court's decree and vacate from the applicant's land.
5. The applicant states that he has extended extreme indulgence to the judgment-debtor by giving her notice to vacate from the said land. A copy of the said notice marked "JNM III" has been annexed. That the said notice was duly served as required by law, but that notwithstanding, the judgment-debtor has deliberately refused to comply. The applicant avers that the continued occupation of his land by the judgment debtor is contrary to this Honourable court's orders and is prejudicial to the applicant.
6. It is the applicant's desire to have this Honourable court's orders fully implemented by an auctioneer authorized by the court. That in view of the judgment-debtor's conduct, the applicant is apprehensive that she will obstruct execution of the court's decree and therefore it is necessary that the officer commanding the nearest police station be authorized to supervise enforcement of the decree.
7. The applicant states that he has identified CLEAR REAL TRADERS as the auctioneers to execute the court's decree and that the land is situated within the jurisdiction of the Officer Commanding Kathare Police Station in Buuri East Sub-county and prays that he be authorized to supervise the implementation of this Honourable court's decree. The applicant prays for the orders sought to be granted.
8. In opposing the application, the respondent filed a replying affidavit dated 12th September, 2024, wherein she avers that she has been in occupation of the suit land for more than 50 years and has built their matrimonial home therein where they live with other members of her family.
9. The respondent states that after conclusion of her appeal in Nyeri Civil Appeal No. 232 of 2018 and having been aggrieved by the decision of the court, she immediately instructed her advocate to challenge the same and they filed an application seeking a review of the said decision. A copy of an application Marked "RNI" has been annexed.
10. The respondent states that she is an elderly women now of advanced age and has resided on the suit land throughout her entire marriage and that her deceased husband also resided in the same land prior to his death having acquired it through balloting in or about 1969. That owing to the circumstances of this matter and her age, the eviction orders as sought by the applicant herein are quite drastic and that it is only fair that she be allowed to exhaust all the available legal channels before she is evicted from the suit land.



11. Relying on advice from her advocate, the respondent states that although the judgment of the Court of Appeal was against her, she still has a right to be heard and it is only fair that she be accorded a fair hearing. The respondent avers that she has made extensive developments in the suit land worth millions of money and that the impugned judgment of the Court of Appeal did not take into account the developments made on the suit land nor did it make any orders for her compensation.
12. The respondent states that she has also learnt that one of her sons has since moved to court and obtained orders against the applicant herein since the alleged title is completely fraudulent. A copy of the said orders marked “RN 2” has been annexed. The respondent contends that it is only fair that she be allowed to extinguish any available legal channels before any adverse orders are made against her. The respondent urged the court to dismiss the application herein with costs for being premature and incompetent.
13. The application was canvassed by way of written submissions. The applicant filed his submissions dated 19th September, 2024, though the firm of Gatari Ringera & Company advocates while the respondent filed hers dated 5th November, 2024 through the firm of Kinyanjui Kirimi & company advocates.
14. The applicant submitted that by the application herein, he seeks to have effect given to this Honourable court’s decree passed in his favour. That the respondent’s appeal against this court’s judgment was unsuccessful and that there are no orders of stay of execution of the court’s decree.
15. The applicant submitted that the respondent made a feeble attempt to delay execution of the decree by exhibiting a copy of an application filed before the Court of Appeal seeking review of its judgment disallowing her appeal, but no application for stay of execution of this Honourable court’s decree has been sought nor granted by the appellate court. It is the applicant’s submission that the application before the appellate court was purposely filed to delay the hearing of the application herein.
16. The applicant submitted that the respondent has demonstrated that she is not ready and willing to comply with lawful orders issued by the court, and that she wrongly continues in occupation of the applicant’s land to his detriment. The applicant argued that extreme indulgence has been extended to the respondent to voluntarily relinquish possession of the applicant’s land, but it is manifestly clear that she will not do so. That this court is therefore called upon to invoke its coercive power to compel the respondent to comply with its orders. That the applicant seeks that this court’s decree be enforced to the letter by granting the orders sought.
17. It is submitted that the applicant’s plea that she be spared execution on the basis of her age is irrelevant. That the record will show that she has her own land adjacent to the applicant’s land, but has chosen to continue occupying the applicant’s land in brazen contempt of valid court orders. The court was urged to find that the application is merited and grant the orders sought. The applicant relied on the case of Francis Tobias Akello Vs Gabriel Onyanchi Sudia [2022] eKLR and Mary Wangui Karanja & another [2021] eKLR.
18. On behalf of the respondent, it was submitted that it is only fair that the orders sought herein be held in abeyance pending the determination of the review application in the Court of Appeal. That should the orders sought in this application be issued, the outcome of the review application will be rendered nugatory.
19. Additionally, it was submitted that the respondent is an elderly woman towards her sunset years and has resided in the suit land since 1969 and has always called it home and has no other place to call home. That it is only fair that she be allowed to live on the suit land awaiting the hearing and determination



- of her application for review in the appeal matter. That it is not possible that the applicant has a good case but there is no justification whatever as to why the respondent should be evicted when she has not exhausted legal avenues available to her. That her occupation on the suit land for a very long time has given rise to prescriptive right over the same regardless of the outcome in this matter.
20. The respondent's counsel submitted that Article 43(1) (b) of *the Constitution* guarantees every person the right to accessible and adequate housing and to reasonable standards of sanitation. That this right derives from the principles of equitable access to land under Article 60 (1) (1) of *the Constitution* and that the respondent is no lesser citizen and is entitled to these rights not lesser than any other person.
 21. It was also submitted that the respondent deposed in her replying affidavit that there is already in place orders of inhibition obtained by one of her sons forbidding any dealings with the suit land which were issued in Meru CM ELC No. 3116 of 2023, and thus it is only fair that the orders sought herein be declined pending the hearing and determination of the two other matters in relation to ownership of the suit land. That should the orders sought in this matter be issued and executed, the other two pending matters will be rendered nugatory and the respondent will be thrown out of her land without being accorded a fair chance to be heard as per Article 50 of *the constitution* of Kenya, 2010. It is submitted that the framing of the said Article is such that it accords a fair hearing to both sides irrespective of the strength of their case.
 22. It is further submitted that the respondent has adduced before this court and other forums sufficient evidence to show and prove the extensive developments they have conducted on the suit land which is well over 10 million shillings. That the impugned judgment of the Court of Appeal did not even take into account these developments nor did it make any orders for compensation of the respondent. That besides having her residence in the suit land, the respondent also has other properties therein and the orders sought herein are in violation of her right to ownership of property as per Article 40 of *the constitution* as read with Article 260 which extends that right to protection of goods and personal property.
 23. The respondent's counsel submitted that notwithstanding, and in addition to the foregoing, our jurisdiction lacks any elaborate legislation and or guidelines to regulate eviction, but as a member of international community and a signatory to various United Nations Treaties and Convention, we are bound by such international guidelines that are intended to safeguard the rights of persons liable to evictions. The respondent relied on the case of Kamunya & 24 others Vs Patmwa Limited(Civil Application E084 of 2021) [2021] KECA 163 [KLR] (19TH November, 2021) ruling and Suleiman Vs Amboseli Resort Limited (2004) 2 KLR 589 which quoted with approval Samvir Trustee Limited Vs Guardian Bank Limited (Milimani) HCCC 795 of 1997.
 24. It was further submitted on behalf of the respondent that there is no proof of compliance with *the constitution* and provisions of the *Land Act*, 2012. The respondent urged the court to find in her favour and dismiss the application in its entirety with costs to the respondent.
 25. I have considered the application, the response and the submissions filed. The issue for determination is whether the applicant is entitled to the orders sought. The application herein basically seeks to have effect given to this Honourable court's decree passed in favour of the applicant.
 26. On 29th August 2018, this court (Mwangi Njoroge J) rendered a judgment in which it dismissed the applicant's suit and allowed the respondent's counterclaim. The court issued an order of eviction of the applicant from the respondent's land Parcel Number KIIRUA/NKANDO/676 and an order of permanent injunction restraining the applicant herein from interfering with the said land.



27. Being aggrieved by the said decision of this court, the applicant filed Civil Appeal No. 232 of 2018 in the Court of Appeal at Nyeri. The said appeal was heard and by a judgment delivered on 22nd September, 2023, the Court of Appeal dismissed the appeal with costs. It is following that dismissal that the applicant has filed the application herein. The applicant argues that following the dismissal of the respondent's appeal, she was obliged to fully comply with this Honourable court's decree, but instead, has willfully refused to obey the court's decree and vacate from the applicant's land.
28. In urging the court to disallow the application, the respondent submitted inter alia, that it is only fair that the orders sought be held in abeyance pending the determination of an application for review in the Court of Appeal and that there is already in place orders of inhibition obtained by one of her sons forbidding any dealings in the suit land which were issued in Meru CMC ELC NO. E 116 of 2023. However, it is not in dispute that there are no orders of stay of the decree of this court that are in place. Indeed, there is no evidence of any pending application of stay of execution filed by the respondent, either in this court or before the Court of Appeal or even in Meru CMC ELC No. E116 of 2023.
29. From the material on record, it is clear that the Court of Appeal put the matter to rest when it dismissed the respondent's appeal on 22nd September, 2023. There are no orders for stay to stop the execution of the decree herein. It is trite that court orders are not given in vain. The respondent having exhausted all possible avenues for ventilating her claim ought to accept that litigation must come to an end. Looking at the orders issued in the judgment dated 29th August, 2018, it is clear that the respondent was required to give vacant possession of the suit property to the applicant or be evicted. Enforcement of such an order can only be as stipulated under Order 22 Rule 29 of the Civil Procedure Rules and Section 152A to 152F of the Land Act, 2012. This is because eviction order has far reaching implications as it entails the removal forcefully of a party from land that one has been in possession and occupation for sometime. I have perused the notice dated 5th October, 2023 exhibited by the applicant that is marked "JNM III". The same is addressed to the respondent herein and copied to the Deputy County Commissioner, Buuri East Sub County, the area chief, Kithima Location and the Officer Commanding Kathare Police Station (OCS). The said notice gave the respondent 3 months to vacate from the applicant's land. In my considered view, the applicant adhered to the clear provisions of the law and is entitled to the orders sought herein. In my view, the respondent has no more justification for remaining on the suit land when there is nothing stopping the execution of the decree herein
30. I therefore find merit in the notice of motion dated 16th January, 2024 and I allow it as prayed.
31. Costs of the application to be borne by the respondent.
32. Orders accordingly.

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

IN THE PRESENCE OF

Court Assistant – Tupet

MS. Mugo for defendant/applicant

Ms. Muthee holding brief for Kirima for plaintiff/respondents

C.K YANO

JUDGE

