



**Mwongera (Substituted for Joel Mukobwa Mwongera) v Kenya
Pentecostal Holliness Church Wiru Branch (Environment & Land Case
22 of 2017) [2024] KEELC 14078 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14078 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE 22 OF 2017
CK YANO, J
DECEMBER 18, 2024**

BETWEEN

**ANESTLY MUTHONI MUKOBWA PLAINTIFF
SUBSTITUTED FOR JOEL MUKOBWA MWONGERA**

AND

**KENYA PENTECOSTAL HOLLINESS CHURCH WIRU
BRANCH DEFENDANT**

RULING

1. The application for determination is a Notice of motion dated 18th September, 2024 by the plaintiff/ applicant seeking the following orders:-
 - a. That the court be pleased to order and direct Kenya Pentecostal Holliness Church through registered trustees, agent or servant or any person acting at their behest to give vacant possession of Lr.mwimbi/murugi/1788 forthwith to the applicant and in default that they be forcefully evicted by a court bailiff from Lr.mwimbi/murugi/1788 at their own expense.
 - b. That the OCS Chogoria Police Station to supervise and oversee the eviction excise when and if the Kenya Pentecostal Holliness Church is evicted from LR. Mwimbi/murugi/1788.
 - c. Cost of this application be provided for.
2. The application is brought under Section 3A and 63(4) of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules and is supported by the affidavit of Anesty Muthoni Mukobwa sworn on 18th September, 2024 and is premised on the grounds that Judgment in this suit was delivered on 20th June, 2018 and being dissatisfied with the said Judgment, the defendant/respondent appealed to the Court of Appeal vide Appeal No. 187 of 2018 which appeal was dismissed and as such the operative



Judgment is the one of this court. That according to the judgment and decree extracted and issued by the court on 4th September, 2018, the defendant, agent, servant or any person acting at their behest were ordered to vacate and remove their properties from LR. Mwimbi/murugi/1788 within 3 months of the judgment.

3. The applicant averred that it is now 6 years from the time Judgment was delivered in the suit and approximately 4 months from the date of judgment in the Court of Appeal which was delivered on 17th May, 2024 and the defendant have shown no indication, willingness or readiness to give the applicant vacant possession of the suit premises despite being ordered to do so within 3 months of the date of delivery of the judgment herein. That unless the court intervenes and order the defendant to move out of the suit land, the applicant will never enjoy the fruits of her successful litigation. That it is only fair and just that the prayers sought be granted to bring to close and logical conclusion of this suit as litigation must come to an end. That no party stands to suffer any prejudice in the event the orders sought are granted.
4. In her supporting affidavit, the applicant has annexed copies of the Judgment dated 20th June, 2018, Judgment of the court of Appeal delivered on 17/5/2024 in Civil Appeal No. 187 of 2018, decree issued by this court on 4th September, 2018 and photographs showing the defendant's structures on the suit land.
5. The defendant/respondent opposed the application and filed grounds of opposition dated 7th October, 2024 on the following grounds: -
 - i. The application is an abuse of the due process as the orders it is seeking can only be granted on a substantive suit and not through an application.
 - ii. The main suit had not sought for vacant possession and as such the same cannot be granted on an application in the same suit.
 - iii. That in the main suit the applicant sought for orders for injunction and not eviction.
6. The application was canvassed by way of written submissions. The applicant filed her submissions dated 1st November, 2024 through the firm of IC Mugo & Co. Advocates while the respondent filed theirs dated 13th November, 2024 through the firm of L. Kimathi Kiara & Co, Advocates.
7. The applicant's counsel identified the issues for determination to be (i) whether eviction order should issue against the defendant at their own expense from Land Parcel LR. Mwimbi/murugi/1788 one the exercise be carried out by a court bailiff, (ii) Whether the grounds of opposition by the defendant are meritorious or they should be disallowed, and (iii) who should pay the costs of this application.
8. The applicant submitted that she is the legal representative of the original registered proprietor of LR. Mwimbi/Murugi/1788 are Joel Mukobwa Mwongera. That the suit was concluded and judgment in favour of the applicant in the judgment delivered on 20th June, 2018 by Justice P.M. Njoroge. That being dissatisfied with the said judgment, the respondent appealed to the Court of Appeal vide CA. NO. 187 of 2018 which they lost and therefore the judgment of this court stands.
9. It was submitted on behalf of the applicant that the judgment of this court delivered on 20th June, 2018 adjudged that the respondent should give vacant possession of the suit premises to the applicant within 3 months of the judgment. That the judge went on to pronounce himself that in the event that the respondent does not give vacant possession of the suit premises, the OCS Chogoria Police Station was to oversee the eviction of the respondent from the suit land. That the exercise was to be carried out by a court bailiff.



10. The applicant stated that upon presenting the judgment to the OCS Chogoria Police Station, the OCS could not effect the judgment arguing that he required substantive orders and not the judgment, and this is why the applicant has filed the present application before this court for the implementation of the judgment of the court delivered on 20th June, 2018.
11. The applicant's counsel quoted verbatim the final orders of the learned Judge in the said judgment, and argued that it is clear therefrom that the respondent cannot avoid the acts of being evicted from the suit land. That the respondent lost in the primary suit and the judgment was clear that he was supposed to move out of the suit land within 3 months of the Judgment. The applicant submitted that it is now more than 6 years since the Judgment was entered in this court and over 5 months from the date the court of Appeal delivered its judgment. That having lost in the court of appeal, the respondent has no alternative other than to move out of the suit land or be evicted. The applicant submitted that she has clearly demonstrated that eviction orders should issue against the respondent, otherwise the court orders of this court will have been made in vain. They submitted that the grounds of opposition by the respondent are not meritorious and urged the court to grant the orders sought which is for the enforcement and implementation of the judgment of the court.
12. It was submitted by the respondent that the applicant herein sued the respondent for an orders of injunction to restrain them from trespassing on the suit land which matter was allowed. That the applicant did not apply for the eviction of the respondent from the suit land, but the court directed the respondent to vacate the suit land. It was submitted on behalf of the respondent that that did not amount to an order of eviction.
13. The respondent's counsel submitted that the issue of eviction is quite substantive and in order for the same to be granted, there must be a suit which must be heard. That once the court grants the prayer for eviction, the party seeking eviction must comply with section 152 of the Land Act which requires that the order must be served upon the county administrator, the police and the respondent. That the reason for this is security to ensure the same has been done according to the law. The respondent's counsel argued that in an application such as this, the parties will not be heard on the reasons for eviction or otherwise. That an order for eviction must flow from the pleadings and cannot be issued through an application like the applicant is doing herein. It is submitted by the respondent's counsel that the application herein is an abuse of the due process and lacks merit. That there was no mention of eviction in the main suit as the applicant was only interested with an injunction. The court was urged to dismiss the application.
14. 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.
15. My reading and understanding of the application is that the same basically seeks to have effect given to this Honourable Court's Judgment and decree passed in favour of the applicant. On 20th June, 2018, this court (Hon. P. M. Njoroge, J) rendered a Judgment in which Judgment was entered for the applicant herein and the respondent's counter-claim was dismissed. The court issued an order of permanent injunction restraining the respondent herein or its agents or anyone else acting at its behest from entering, staying or in any other way dealing with the applicant's use and occupation of the applicant's LR. Mwimbi/Murugi/1788 after 3 months from the date of delivery of the said judgment. In addition, the court ordered and directed the respondent, its agents or anybody else acting at its behest to vacate the suit land and remove its property therein within 3 months of the date of delivery of the judgment failing which, without further reference to the court, the OCS in charge of the area where the suit land is situated to facilitate the apposite eviction.



16. Being aggrieved by the said decision, the respondent lodged Civil Appeal No. 187 of 2018 in the Court of Appeal at Nyeri. The said Appeal was heard and by a judgment delivered on 17th May, 2024, the court of appeal found that the appeal was devoid of merit and accordingly dismissed it with costs to the applicant herein. It is following that decision of the court of appeal that the applicant filed the application herein to enforce the judgment of this court delivered on 20th June 2018.
17. In urging the court to disallow the application, the respondent submitted that there was no mention of eviction in the main suit as the applicant was only interested with an injunction. The respondent's counsel submitted that the court directed the respondent to vacate the suit land and argued that that did not amount to an order of eviction. It was the respondent's submission that the issue of eviction is quite substantive and for the same to be granted, there must be a suit which must be heard. That once the court grants the prayer for eviction, the party seeking eviction must comply with Section 152 of the *Land Act*.
18. In this case, it is not in dispute that this court (P.M.Njoroge, J) on 20th June, 2018 allowed the applicant's suit and consequently dismissed the respondent's counterclaim. The learned Judge issued an order of permanent injunction against the respondent or its agent, restraining it from dealing in any way with the suit property. The court further issued an eviction order directing the respondent to vacate the suit property within three months of the date of delivery of the judgment. Subsequently, the court of appeal in its judgment delivered on 17th May, 2024 dismissed the respondent's appeal with costs to the applicant herein. That means that the Judgment of this court is still in place. There is no evidence of any orders of stay of execution or any pending application of stay of execution by the respondent either in this court or before the court of appeal.
19. From the material on record, it is clear that this court issued an eviction order directing the respondent to vacate the suit property within three months of the delivery of the judgment. The court of Appeal put the matter to rest when it dismissed the respondent's appeal on 17th May, 2024. There are no orders stopping the execution of the decree of this court. It is trite that court orders are not given in vain. The respondent having exhausted all possible avenues of ventilating its claim ought to accept that litigation must come to an end. The respondent's argument that the order of eviction requires another substantive suit is superfluous since the orders of eviction herein were issued by the court upon hearing and determination of the applicant's suit and the respondent's counter-claim. It is clear from the judgment herein that the respondent was required to give vacant possession of the suit property to the applicant within three months of the delivery of judgment or be evicted. In my considered view, the court order adhered to the provisions of Section 152 of the *Land Act* since the respondent was granted a period of three months to vacate from the suit property or be evicted under the supervision of the officer commanding police Station (OCS) in charge of the area the suit land is situated. It is also my view that the respondent has no more justification for remaining on the suit property when there is a court order directing it to vacate therefrom and when there is nothing stopping the execution of the decree of the court.
20. Consequently, I find merit in the notice of motion dated 18th September, 2024 and I allow it as prayed.
21. Costs of the application be borne by the respondent.
22. Orders accordingly

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF DECEMBER, 2024.

HON. C. YANO

ELC – JUDGE



Order: This Ruling has been delivered via Microsoft teams online platform a signed copy will be availed to each party upon payment of the applicable court fee.

