



**Mohammed & another v Nyaganga (Environment & Land Case  
265 of 2008) [2023] KEELC 201 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 201 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 265 OF 2008  
NA MATHEKA, J  
JANUARY 26, 2023**

**BETWEEN**

**AMIRAL HASSANALI MOHAMMED ..... 1<sup>ST</sup> PLAINTIFF**

**ZARINA AMIRALI HASSANALI MOHAMMED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN ODERO NYAGANGA ALIAS JOSEPH O. NYAGANGA ..... DEFENDANT**

**RULING**

1. The application is dated October 3, 2022 and is brought pursuant to order 51 Rule 1, Order 22 Rules 6 and 7, of the Civil Procedure Rules and Sections 1A, 1B, 3A, 3B & 63(e) of the Civil Procedure Act seeking the following orders;
  1. That the Application be certified as urgent and service thereof be dispensed with in the first instance.
  2. That the Defendant/Respondent is in default of vacant possession from Plot No Mombasa/Block V/Mainland South/ 133 Measuring 0.267 ha (the suit premises) as per order by the court in judgment delivered on November 1, 2017.
  3. That an order of eviction is hereby issued against the defendant/respondent herein namely John Odero Nyaganga.
  4. That the Officer in Charge, (OCS) Shell beach Police Station to supervise the exercise of the above order and provide police assistance for the purpose of maintaining Law and Order.
  5. That the cost of this application be provided for.
2. It is based on the grounds that the Plaintiffs/Applicants successfully prosecuted this suit against the defendant and judgment was entered on November 1, 2017 in favor of the Plaintiff/Applicants. That



the judgment is in favor of the applicants and orders the Defendant/Respondent granted sixty (60) days from the date of the judgment to voluntarily surrender vacant possession in default the applicant to use lawful means to obtain vacant possession. That since November 1, 2017 to date the Defendant/Respondent has not willfully surrender vacant possession to the Plaintiff being a period of over five (5) years. That the Defendant/Respondent mischievously planned the delay by filing an appeal and sought a stay of the execution of the decree herein and which stay order issued on June 26, 2018 was set aside with cost to the applicant. That this Honourable court found no merit in sustaining the Respondent stay as it amounted to open abuse of the court process. That the Respondent has unfairly prevented the Applicants from enjoying the fruits of their judgment and thus this court shall be justified in granting the orders sought in line with the default clause issued in this court's judgment.

3. The Respondent submitted that the *Environment and Land Court Act* provided for the execution of court judgements/orders/decrees as provided in the *Civil Procedure Act* and Rules. That the Applicant has not followed that procedure and has not attached a copy of the application to execute the decree and a warrant to the court bailiff to execute the decree. That the Respondent is not in occupation of the suit property. That the Applicant has not adduced evidence that they were attempts to get vacant possession and the same was resisted.
4. This court has considered the application and submissions therein. I have perused the court record and find that the Plaintiffs/Applicants successfully prosecuted this suit against the Defendant and judgment was entered on November 1, 2017 in favor of the Plaintiff/Applicants. That the judgment is in favor of the Applicants and orders the Defendant/Respondent granted sixty (60) days from the date of the judgment to voluntarily surrender vacant possession in default the applicant to use lawful means to obtain vacant possession. There is no stay in this matter and the Applicant should not be denied the fruits of his judgement. The Respondent has no valid reason why he has not moved out of the suit property. I find that the application is merited and I grant the following orders;
  1. That Defendant/Respondent is to vacate possession from Plot No Mombasa/Block V/Mainland South/ 133 Measuring 0.267 ha (the suit premises) as per order by the court in judgment delivered on November 1, 2017 within the next 30 (thirty) days upon service of this order and in default eviction order to issue forthwith.
  2. That the Officer in Charge, (OCS) Shell beach Police Station to supervise the exercise of the above order and provide police assistance for the purpose of maintaining Law and Order.
  3. Costs of this application to be paid by the Defendant/Respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26<sup>TH</sup> DAY OF JANUARY 2023.**

**N.A. MATHEKA**

**JUDGE**

