



**Kisinzi v Kisinzi (Environment & Land Case 15 of 2020)  
[2023] KEELC 15732 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15732 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE 15 OF 2020  
TW MURIGI, J  
FEBRUARY 15, 2023**

**BETWEEN**

**FRANCIS NGUNDO KISINZI ..... APPLICANT**

**AND**

**BONIFACE KINYANZUI KISINZI ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated September 7, 2022, brought under the provisions of Sections 3 and 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya and all other enabling provisions of the law the Applicant seeks the following orders:-
  1. Spent.
  2. That the Officer Commanding Station (OCS) Mbooni Police Station or an officer under his command in the rank of an inspector be and is hereby ordered to provide police assistance to the Plaintiff herein Francis Ngundo Kisinzi for the purpose of ensuring compliance with the order of eviction issued on June 22, 2022 and to preserve law and order in the process of evicting the Defendant from land parcel number Makueni/Utangwa/2461 property of the Plaintiff.
  3. That the costs of the application be provided for.
2. The application is premised on the grounds on its face together with the supporting affidavit of the Applicant sworn on even date.

**The Applicant's case**

3. The Applicant averred that the Court in its judgment delivered on June 22, 2022 issued an order of eviction against the Defendant from land parcel No Makueni/Utangwa/2461. The Applicant further averred that despite service of the order upon the Defendant and the OCS Mbooni, the Defendant



has aggravated his acts of trespass by deploying more workers to undertake farming activities on his parcel of land. The Applicant contends that unless the orders sought are granted, the Defendant will continue to trespass on his property and thus he will suffer great loss.

### **Analysis and determination**

4. Having considered the application, the pleadings and the written submissions, I find that the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
5. The Plaintiff instituted this suit against the Defendants vide a Plaint dated December 15, 2016 and sought for the following orders: -
  - i. A permanent injunction restraining the Defendants from trespassing on the Plaintiff's parcel of land being L R No 12080 at Kibwezi.
  - ii. The Honourable Court do issue an eviction Notice against the Defendants from occupying the suit property No L R No 12080.
  - iii. General damages.
  - iv. Costs and interest of this suit.
6. The matter proceeded as undefended as the Defendant/Respondent though duly served with the summons to enter appearance and plaintiff failed to enter appearance or file a defence to the suit.
7. The hearing proceeded on November 19, 2020 after the Court was satisfied that the Defendant had been duly served with the hearing notice. On June 22, 2022, this Court delivered its judgment in favour of the Plaintiff in the following terms: -
  - a. A permanent injunction restraining the Defendants from trespassing on the Plaintiff's parcel of land being L R No 12080 at Kibwezi.
  - b. The Honourable Court do issue an eviction notice against the Defendants from occupying the suit property which is L R No 12080.
  - c. Kshs 300,000/- being general damages.
  - d. Costs and interest of the suit.
8. The Applicant deposes that the Respondent has deliberately declined to vacate the suit property despite having been served with the decree. No response was filed to the application despite the same being served upon the Respondent.
9. There is already a judgment in favour of the Applicant and it appears that the Respondent has not adhered to the terms of the judgment. The Plaintiff already has an order for an eviction against the Defendant from occupying the suit property in terms of paragraph (b) of the Judgment.
10. The judgment delivered on June 22, 2022 has neither been set aside nor challenged in any way. It is clear that since the judgment was delivered on June 22, 2022 and a decree extracted on July 20, 2022, the Respondent has not given the Applicant vacant possession of the suit property.
11. Litigation must come to an end. Consequently, this Court finds and holds that the Applicant is entitled to enjoy the fruits of his judgment.
12. The upshot of the foregoing is that the application dated September 7, 2022 is allowed in the following terms;



- a. An order of an eviction be and is hereby issued against the Respondent from occupying land parcel L R No Makueni/Utangwa/2461.
- b. The Officer Commanding Mbooni Police Station is hereby authorized to enforce compliance of the Court orders issued on June 22, 2022.
- c. The Respondent to bear the cost of this application.

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**HON. T. MURIGI**

**JUDGE**

**RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**IN THE PRESENCE OF: -**

**Court assistant - Mr. Kwemboi**

**Muteti for the Plaintiff/Applicant**

