



Mugo & another v Church Commissioner of Kenya Limited Limited & 3 others (Environment & Land Case 118 of 2017) [2023] KEELC 16710 (KLR) (29 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 118 OF 2017
LN GACHERU, J
MARCH 29, 2023**

BETWEEN

FRANCIS MAINA MUGO 1ST PLAINTIFF

PETER MUCHOKI MUGO 2ND PLAINTIFF

AND

CHURCH COMMISSIONER OF KENYA LIMITED 1ST RESPONDENT

BISHOP JULIUS WANYOIKE 2ND RESPONDENT

JAMES KAMANDE KAMAU 3RD RESPONDENT

THE NATIONAL LAND COMMISSION 4TH RESPONDENT

RULING

1. The Plaintiffs/Applicants filed the instant Notice of Motion Application dated May 11, 2021, for orders;
 - i. That the Honourable Court be pleased to issue an order for the provision of security by the Officer Commanding Makuyu Police Station and the Assisant County Commissioner, Murang'a South, on the day appointed for the eviction of the Respondents from the land parcel number L R Kakuzi/ Kirimiri Block 111/38, part Ndabatabi and demolition of the premises therein
 - ii. That the Honourable Court be pleased to order the Respondents to pay full costs for the eviction, demolition and provisions of security to be assessed by the Court upon completion of the exercise.
 - iii. The costs of this application be provided for.



2. The application is premised on the Six Grounds stated thereon and the Supporting Affidavit of both Applicants sworn on May 11, 2021. The Applicants contended that a judgment was entered in their favor against the Respondents on June 3, 2020. That the Respondents were ordered to vacate the suit property within six months, but they have refused and/ or neglected to obey the said orders. It is their contention that they have attempted an amicable way of having the Respondents move out of the suit property, but it has not borne fruits. They now want this Court to issue the orders sought for purposes of eviction.
3. In response to the application the Respondents filed a Replying Affidavit sworn on July 1, 2021 by James Kiranga Kamau, who averred that he has been duly authorized by the Defendants/Respondents to swear the Affidavit on their behalf, and he is conversant with the matter. He further averred that there is an Appeal pending, and the instant application is unnecessary. He further deponed that there was an attempt to buy off the suit property, which is within the Applicant's knowledge, but they have been unable to raise funds. He urged this Court to give the Respondents time to raise funds to buy the suit property as evicting them would be prejudicial.
4. The application was dispensed by way of written submissions.
5. The Applicants filed their written submissions through the Law Firm of Kirubi Mwangi Ben & Co Advocates. They reiterated the contents of their application and added that the Respondents approached them with the intention to buy 0.6 acres of land, but failed to honor their proposal and offer of payment. It is their submissions that they are still open to the offer for purchase and they should exhibit good faith.
6. The Respondents did not file any submissions, despite being granted time to do so.
7. It is evident from the Court record that Judgment was entered against the Respondents on June 3, 2020. The Court directed the Respondents to deliver vacant possession of the suit land to the Applicants within six months. Failure to observe the foregoing order, the Court granted the Applicants eviction order to be carried out by a Court authorized Bailiff.
8. The Respondents' filed a Notice of Appeal lodged before this Court on June 15, 2020. Subsequently, they sought orders for stay vide a Notice of Motion Application filed in this Court on September 9, 2020. The application was never heard. On September 29, 2020 when the application came up for hearing, parties informed Court they intended to compromise the application and a mention date was given for October 29, 2020, but parties failed to attend Court. It was not until the instant application that parties were jolted to action. On April 27, 2022, parties had informed this Court that they were attempting an out of Court settlement a fact both parties now admit they have been pursuing.
9. The Applicants now wish to forcibly evict the Respondents and are seeing Police assistance to enforce the orders of this Court. Having analyzed the pleadings and the annexures thereto and the Applicants' submission the issue for consideration are
 - i. Whether the application is merited
 - ii. Who should pay costs for this application

I. Whether the application is merited

10. It is undisputed that the Applicants were issued eviction orders by this Court. There is no evidence that the said orders have been stayed, noting that the application for stay was never canvassed. It is not certain for this Court whether an Appeal was ever filed or that there is any order emanating from



the Appellate Court, staying the orders of this Court, but since there is none on record this Court concludes that its orders of June 3, 2020 are in force.

11. It is trite law that orders of Court cannot be issued in vain. It is also important that the orders of Court be complied with to the later. If there is any difficulty in complying with the orders of the Court, a party has the right to come back to Court and explain the difficulty.
12. Judicial authority is derived from the Constitution and to a large extent from the people of Kenya. Judicial Orders when issued must be obeyed unless they have been set aside, varied or reviewed. As rightly put by J B Ojwang J as he then was in the case of Nairobi Misc App No 1609 of 2003 *B v Attorney General* [2004] eKLR

“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people..”

13. The Court in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, when echoing the need to obey Court orders stated:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and center. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”

14. It is apparent for this Court that the Respondents are still in occupation of the suit property. This is oblivious of the orders of the Court that they vacate the suit property within six months of the date of Judgment. They were required to have vacated from the suit property on or before December 6, 2020. As it stands now, the Respondents are in breach of the Orders of Court, which they attribute to an attempt to compromise the judgment by buying the suit property from the judgment holders.
15. The Applicants claim that the Respondents have refused to vacate the suit property. This act is undoubtedly a disobedience of the orders of Court, which required them to vacate. The Applicants are urging this Court to order the OCS Makuyu Police Station to provide security on the day of eviction. The role of Police is to maintain law and order. They have no duty to play in enforcement of civil orders. In *Kamau Mucuba v Ripples Ltd* [1993] eKLR the Court held:

“..but it would, in any event be unlawful to utilize the police in a civil action for the purpose of effecting or aiding private evictions or reinstatements. Including that paragraph the Deputy Registrar was acting wholly *ultra vires*.”



16. The Applicants have not sought orders to use the Police to evict the Respondent, what they are seeking is for the Police to offer security. It is common knowledge that eviction is never a peaceful process, unless a party is willing. The presence of Police may sometime be vital in maintaining law and order and providing security. The Court in the case of *Bruce Joseph Bockle v Coquero Limited* [2017] eKLR, when observing the importance of police in enforcement of civil orders held:

“Last but not least, ideally, police officers ought not to be used in enforcement of civil processes. However, in this case the respondent demonstrated that the appellant had refused to comply with the court orders; he had at one point hindered respondent from erecting a perimeter wall and also that he had put in squatters in the suit property. Taking into account those circumstances, we see nothing wrong with the learned Judge directing the police to maintain law and order during the eviction process. This is a clear case where police involvement and the observance of law and order is necessary”

17. The Applicants have not demonstrated that they have attempted to evict the Respondents, if any they have been engaged in an attempt to compromise the judgment of this Court. However, this Court notes and appreciates the correspondences between parties which show the Applicants’ willingness to sell the suit land to the Respondents and avoid eviction. As detailed in the letter dated April 19, 2021 the Applicants expressed their frustration when it wrote “Our client has really accommodated yours. Kindly do communicate your position within the next 14 Days...” Resultantly, the Applicant filed the instant application which implies the lack of commitment by the Respondents.

18. Despite the Applicants engaging the Respondents for some time now, the Respondents have been adamant and have not shown any commitment even after the filing of this application. Admittedly in the Applicants’ submissions there is a show that they intend to engage the Respondents further. They submit “Your Lady, still in good faith, we say to the Respondents that if they wish to consider one offer the doors are open and they should exhibit god faith and committeemen”

19. Even though this Court has not perused any express communication on the intended purchase by the Respondents, both parties have affirmed that they are engaging in a possibility of it. The Respondents are sitting on the Applicants’ right to enjoy the fruits of their judgment and they have not given any commitments that they intend to buy the suit land as show of good faith. The engagements have been going on for some time now as evident in the record. The eviction orders having been issued, the Applicant has the right to execute them. In the interest justice the Court shall direct that:

- a. The Respondents are given thirty (30) Days to finalize their commitment to purchase the suit property.
- b. In default (a) the Applicants should evict the Respondents.
- c. The Officer Commanding Station, Makuyu Police Station shall provide security for purposes of maintaining law and order but shall not be engaged in the eviction process.
- d. The Respondents shall bear the costs for eviction.

II. Who should pay costs

20. It is trite law that costs shall follow the events. There is no reason why this Court should not award the Applicants costs. It proceeds to award costs of this application to the Plaintiffs/Applicants herein.

21. Consequently, the Court finds and holds that the instant Notice of Motion Application dated May 11, 2021, is merited and is allowed on the above-mentioned terms, with costs to the Plaintiffs/Applicants.



It is so ordered.

DATED,SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF MARCH,2023.

L. GACHERU

JUDGE

Delivered virtually in the presence of;

Joel Njonjo/Mwende - Court Assistants

1st Plaintiff /Applicant

Absent

2nd Plaintiff/Applicant

1st Defendant/Respondent

2nd Defendant/Respondent Absent

3rd Defendant/Respondent

4th Defendant/Respondent

L GACHERU

JUDGE

29/3/2023

