



**Opande v Opondo & another (Environment and Land Miscellaneous Application E042 of 2024) [2025] KEELC 1362 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1362 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E042 OF 2024**

**E ASATI, J  
MARCH 20, 2025**

**BETWEEN**

**GEORGE TIMOTHY OPANDE ..... APPLICANT**

**AND**

**MARY OPONDO ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of Notice of Motion application dated 23<sup>rd</sup> August 2024 filed by the applicant pursuant to the provisions of sections 152A, 152B, 152E and 152F of the Land Act of 2012 (as amended) and sections 3 and 3A of the Civil Procedure Rules.
2. The application seeks for orders that:
  1. The honourable court be pleased to issue an order to the 1<sup>st</sup> Respondent to remove herself and/or any other person that she may have placed on plot No. Kisumu Municipality/Block 12/353 forthwith and in default the 1<sup>st</sup> Respondent and/or such persons be forcibly evicted and vacant possession be given to the applicant.
  2. That Samason Muzungu Tumbo t/a Sparnet Auctioneers Services do effect and execute the above eviction orders.
  3. That the court be pleased to order and/or direct the Officer Commanding Station at Kisumu Central police station to offer security and ensure compliance of the orders herein in prayer 2 (two) above.
  4. Costs be provided for.



3. The grounds upon which the application was brought are that the applicant is the proprietor and/or the registered Lessee of plot No Kisumu Municipality/Block12/353, the suit property. That the applicant has been paying land rates and rent since his registration in the year 1998. That the Respondent has illegally entered the said plot and occupied a residential house thereon without the authority of the applicant.
4. That the applicant has since issued several eviction notices upon the 1<sup>st</sup> Respondent and copied the same to the 2<sup>nd</sup> Respondent to no avail. That the 1<sup>st</sup> Respondent has refused to vacate and has continued to trespass upon the suit property. That the Respondent has no right to be on the suit land, that the court has powers to issue the orders sought, that the application has been made promptly, in good faith and in line with the court's judgement and ruling. That unless the 1<sup>st</sup> Respondent is evicted from the suit land the applicant will continue to run into losses.
5. The application was supported by the averments in the Supporting Affidavit sworn by the applicant on 23<sup>rd</sup> August 2024 and the annexures there to.
6. The application was opposed vide the contents of the Respondent's grounds of opposition and replying affidavit sworn by G.O Nyangi County Director of Housing in the Ministry of Transport Infrastructure, Housing and Urban Development on 12<sup>th</sup> September 2024.
7. The case of the Respondent is that the Ministry of Housing owns the said house identified as unregistered high-grade housing units that were reserved for doctors as they were part of Russian Aided Hospital Nyanza. That the Respondent is the wife to the late Doctor Opondo who was a Civil servant allocated a Government House number UNRG/Block12/353 in Milimani in the year 1996 and was making monthly payments through deductions from his pay slip. That immediately after the doctor's demise in the year 2008, the Respondent who was a teacher at the time requested to be allocated vide later dated 4<sup>th</sup> July 2008 and has been paying rent up to date vide cheques to the Principal Secretary State Department of Housing. That the Ministry has owned the house up to date and has never been notified of any sale of the same. That the applicant filed Civil Suit No E250 of 2023 in the Chief's Magistrates Court at Kisumu against the 1<sup>st</sup> respondent, Ministry of Housing and the Honourable Attorney general on the same subject matter and that the same is still ongoing. That the applicant also filed KSM ELC Misc App No E16 of 2023 which was dismissed for want of compliance and the existence of case No E250 of 2023. That the issue of ownership of the property is contested and is awaiting trial.
8. The applicant filed a Further Affidavit sworn on 4<sup>th</sup> October 2024 in reply to the contents of the Replying Affidavit wherein he deposed inter alia that case No KSM CMC E250 of 2023 had been withdrawn on 16/5/2024 vide notice of withdrawal of suit dated 10/5/2024.
9. I have considered the application, the contents of Supporting Affidavit and Further Affidavit and annexures thereto, the Grounds of Opposition, Replying Affidavit and annexures thereto and the submissions made.
10. The application is brought under the provision of sections 152A, 152B, 152E and 152F of the [Land Act](#). These provisions of law relate to prohibition of unlawful occupation of land and removal of the unlawful occupants.
11. Section 152A provides;  
  
"A person shall not unlawfully occupy private, community or public land."



Section 152B provides that “an unlawful occupant of private, community or public land shall be evicted in accordance with this Act.”

Section 152E provides for eviction Notice to unlawful occupiers of private land and

Section 152F provides for application to court for relief.”

12. While the applicant claims that the suit land belongs to him and exhibited a certificate of lease to prove this, the case of the Respondent is that the suit land was government land being occupied by the 1<sup>st</sup> Respondent with the permission of the government. This means that ownership of the property is contested.
13. The Notice under section 152E of the *Land Act* contemplates a situation where there is no contest as to ownership of the land. Where there is a contest as to ownership of the land, the same ought to be determined in a suit first before dealing with the issue of eviction and/or vacant. The rights of the parties cannot be adequately adjudicated by way of the miscellaneous application filed herein
14. The Respondent’s case is that ownership of the suit land was one of the issues to be determined in the KSM CM ELC No, E250 of 2023. That the Respondent had filed a defence and counterclaim to the applicant’s claim and that the same was pending determination.
15. The applicant’s case is that there is no case pending in court as case No. E250 of 2023 has since been withdrawn.
16. To the Replying Affidavit was attached a copy of defence and Counterclaim in Case No. E250 of 2023 filed on behalf of the defendants.
17. The applicants filed an extract from the CTS on the case. It shows that the outcome of the mention of case No E250 of 2023 that took place on 4/11/20-24 was that the case was withdrawn. Counsel for the Respondent submitted that withdrawal of the suit does not defeat the counterclaim. Indeed, under the provisions of the *Civil Procedure Act* withdrawal of the suit does not terminate the counterclaim. The counterclaim seeks for a declaration that the suit land belongs to the Ministry of Housing Public Works and Urban Development, an order for cancellation of the title held by the applicant and costs of the counterclaim. To the extent that the counterclaim is still pending hearing determination, I find that the present application is sub judice.
18. The Respondent contended that the applicant is vexatious for filing suits against the Respondents concurrently in two courts, that the applicant filed Misc. E16/2023 which was dismissed inter alia for want of compliance with the law.
19. The applicant’s contention is that he has complied with the law in the present application because he has issued several eviction notices upon the Respondents to no avail which notices were served/issued to the Deputy County Commissioner and the Officer Commanding the police station Kisumu. The applicant filed a copy of the eviction Notice dated 5/8/2024 and Affidavit of Service of Clifford Ouko Gombe to prove service of the Notice. Service of the Notice was not denied by the Respondent.
20. Given that ownership of the suit land is disputed through the counterclaim and the counterclaim is yet to be determined, it will not be in the interest of justice to order for eviction of the 1<sup>st</sup> Respondent from the suit land at this stage.
21. Let the counterclaim be heard so as to determine the rights of the parties.
22. The application is therefore hereby declined. No order as to costs.

Orders accordingly.



**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 20<sup>TH</sup> DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Onyango for the Applicant.

No appearance for the Respondents.

