



REPUBLIC OF KENYA



**KENYA LAW**  
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**National Housing Corporation v Muchuma (Environmental and Land Originating Summons 556 of 2017) [2025] KEELC 1305 (KLR) (18 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1305 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 556 OF 2017**  
**EM WASHE, J**  
**MARCH 18, 2025**  
**IN THE MATTER OF DELIVERY OF VACANT POSSESSION OF**  
**MADARAKA ESTATE FLAT NO. MF 29H SITUATE ON**  
**PROPERTY LAND REFERENCE NUMBER 25980, NAIROBI**

**BETWEEN**

**NATIONAL HOUSING CORPORATION ..... APPLICANT**

**AND**

**THADDAEUS LEBANON MUCHUMA ..... RESPONDENT**

**JUDGMENT**

1. The Applicant herein filed an Originating Summons dated 25.08.2017 (hereinafter referred to as “the present OS”) seeking for the determination of the following issues; -
  - a. That the Applicant is the registered proprietor of all that Madaraka Estate Flat Number MF 29 H erected and being on all that piece or parcel of land known as property Land Reference 25980, Nairobi together with the developments and improvements thereon (hereinafter referred as “the suit property”).
  - b. That the Applicant is entitled to vacant possession of the suit property.
  - c. That the Respondent by himself or his servants, agents or any other occupants be forcefully evicted from the subject premises should they fail to deliver vacant possession within fourteen (14) days from the date of the Order of this Honourable Court.
  - d. The Respondent bears the costs of this Application.
2. The grounds which the Applicant pleaded in support of the above issues were as follows; -
  - i. The Applicant herein is the lawful and registered owner of the suit property herein.



- ii. The Respondent herein without justification cause failed to comply with the terms of the Offer for Sale granted to him by the Applicants and as a result the offer lapsed.
  - iii. The Applicant has on various occasions reminded the Respondent on the need to adhere to the terms of the Offer for Sale but the Respondent has not kept his bargain pursuant to the terms of the Offer for Sale.
  - iv. Due to this failure on the part of the Respondent, the Applicant issued a Notice to Vacate to the Respondent which notice has not been complied with thereby infringing on the Applicant's constitutional rights to its property and the quiet occupation of the same.
  - v. The Applicant stated that the suit property is currently in occupation, possession and use of the Respondent who is in fact an illegal tenant therein.
  - vi. In conclusion, the Applicant sought this Court to determine the issues hereinabove in its favour.
3. The present OS was duly served on the Respondent who opposed the same by filing a Replying Affidavit dated 12.07.2018 wherein he stated as follows; -
- a. The Respondent admitted that he was the person in occupation and use of the suit property having taken possession on 01.02.1976.
  - b. The Respondent stated that at the time of taking occupation and use of the suit property, the said suit property was the property of the defunct Nairobi City Council with him being a tenant therein.
  - c. Later on, the suit property was transferred to the Applicants herein who then purported to offer the same for Sale to the occupants therein including the Respondent.
  - d. The Respondent's position was that the manner in which the terms and/or conditions of Sale were proposed by the Applicant was unlawful and not in compliance with the law.
  - e. Due to this unlawful and/or illegal proposed terms of Sale by the Applicant, the Respondent was unable to comply and/or fulfil the conditions provided in the Offer for Sale.
  - f. The Respondent further pleaded that he has been in occupation of the suit property for over 42 years within which period he was the one maintaining the same and therefore the purchase price demanded by the Applicant was excessive keeping in mind that it does not consider the rent the Respondent paid earlier and the maintenance costs thereof.
  - g. The Respondent averred that he is now over 72 years old and hence a senior citizen of this Republic who should be taken care of and not harassed by the Applicant by forcing him to accept the Offer for Sale and/or the terms and conditions therein.
  - h. The Respondent therefore sought this Court to dismiss the present OS with costs.
4. The Replying Affidavit herein was duly served on the Applicant and pleadings thereafter closed.

### **Applicant's Case**

5. The Applicant's case commenced on the 11.12.2023 with the testimony of one Anne Wachogu who was marked as PW 1.
6. PW 1 introduced herself as the Principal Estate Officer of the Applicant.



7. PW 1 informed the Court that she had prepared, executed and filed a witness statement dated 27.10.2020 of which she adopted as her evidence in chief.
8. PW 1 averred that the Applicant entity is mandated to develop, manage, rent and/or sale houses to the general public.
9. As regards the suit property, PW 1 confirmed that the same is registered in the name of the Applicant herein.
10. However, before the suit property was taken over by the Applicant, the same was under the management of the defunct Nairobi City Council which had developed the entire estate.
11. Upon taking over various assets of the defunct Nairobi City Council including the suit property, Applicant decided to Offer the same for Sale to the general public.
12. The said assets including the suit property were then advertised for Sale but after a number of litigations before the Court, the Applicant decided to give first priority to the tenants and/or people in occupation of the said properties.
13. PW 1 stated that the suit property herein was then offered to the Respondent herein at a purchase price of Kenya Shillings Two Million One Hundred Thousand (KShs 2,100,000/-).
14. However, the Respondent despite being notified of the above Offer for Sale failed to respond and/or accept the same.
15. Nevertheless, the Respondent proceeded to deposit a total sum of Kenya Shillings Four Hundred Thousand (KShs 400,000/-) with the Applicant.
16. PW 1 informed the Court that the Applicant's efforts to have an official commitment from the Respondent as regards whether and how he would settle the Purchase Price has not been successful yet he still continues to occupy the suit property.
17. PW 1 averred that currently, the Respondent has stopped paying Rent over the suit property and further declined to clear the purchase price contained in the Offer for Sale.
18. In support of the testimony hereinabove, PW 1 produced the following documents in support of their case; -
  - PW 1 Exhibit 1- Copy of a Lease over LR.NO.25980 in favour of NAIROBI CITY COUNCIL from 01.07.2001.
  - PW 1 Exhibit 2- Copy of the Advertisement in the Daily Nation dated 07.09.2001 by the Applicant.
  - PW 1 Exhibit 3- Copy of the letter dated 27.08.2009 from the Plaintiff to the Defendant.
  - PW 1 Exhibit 4- Copy of a letter dated 16.07.2010 from the National Land Commission to the Respondent.
  - PW 1 Exhibit 5- Copy of a letter dated 11.06.2012 on behalf of the Applicant to the Respondent.
  - PW 1 Exhibit 6- Copy of an Advertisement dated 10.05.2006 by the Applicant.
  - PW 1 Exhibit 7- Copy of an Advertisement on Standard Newspaper by the Applicant published on 14.07.2006.
19. PW 1 concluded her evidence in chief by requesting this Court to grant an Order of vacant possession and/or evict the Respondent from the suit property forthwith.



20. On cross-examination, PW 1 stated that the Applicant has filed the present OS to obtain lawful orders that would facilitate the eviction of the Respondent.
21. PW 1 informed the Court that she was not sure of the period which the Respondent had been in occupation of the suit property but he was the one that is still in the premises.
22. Lastly, PW 1 denied knowledge of any advertisement that was done on 19.05.2016 by Nairobi City County and the Applicant herein.
23. At the end of this cross-examination, the Applicant's Counsel did not have any re-examination and the witness was discharged from the witness box.
24. The Applicant then closed their case against the Respondent.

### **Respondent's Case**

25. The Respondent's case began with the testimony of the Respondent who was marked as DW 1.
26. The Respondent introduced himself as a retired Civil Servant who worked with the National Cereals and Produce Board.
27. The Respondent informed the Court that he is a resident of Madaraka Estate in Nairobi West and occupies the suit property herein.
28. According to the Respondent, a number of units within Madaraka Estate were offered for Sale through an Advertisement published on the 19.05.2006 by the Nairobi City County and the Applicant herein.
29. One of the unit in the advertisement was the suit property which is occupied by the Respondent.
30. However, the Respondent declined to purchase the suit property based on the terms and/or conditions for Sale offered by the Applicant.
31. DW 1 was of the considered view that said units should only be sold to the persons and/or people in occupation of the same.
32. Secondly, the Respondent disputed the amount of Purchase Price which was contained in the Offer For Sale being Kenya Shillings Two Million One Hundred Thousand (KShs 2,100,000/-).
33. The Respondent was of the view that the rent already paid and the costs of the maintenance of the house should be factored in the figure that is declared as Purchase Price.
34. Based on this factor, the Respondent wrote a letter to the Applicant asking for the Rent Statement Account from the Applicants but no response was ever received.
35. The Respondent admitted that the Applicant called him for a meeting to understand why he was not accepting and/or declining the Offer For Sale over the suit property.
36. In the said meeting, the Respondent informed the Applicant that he would not respond to the Offer for Sale because in his opinion, the same was illegal and unlawful.
37. However, after this meeting, the Applicant really harassed the Respondent and, in an effort to maintain occupation and use of the suit property, a sum of Kenya Shillings Four Hundred Thousand (KShs 400,000/-) was deposited with the Applicant.
38. The Respondent concluded his evidence in chief by also adopting the witness statement dated 12.06.2018 as his evidence in chief.



39. The Respondent further produced the following documents in support of his defence;-
- DW 1 Exhibit 1- Copy of the Rent Card issued by the Defunct Nairobi City Council to the Respondent over the suit property dated 01.02.1976.
- DW 1 Exhibit 2- A copy of the letter dated 05.12.2007 from the Ministry of Justice to the Town Clerk of Nairobi City Council and the Applicant.
- DW 1 Exhibit 3- Copy of a letter dated 03.05.2017 from the Applicant to the Permanent Secretary, Housing Department.
- DW 1 Exhibit 4- A Copy of a letter dated 26.07.2006 from the Ministry of Science & Technology to the Plaintiff.
- DW 1 Exhibit 5- Copy of a Certificate of Grant of a Utility Model from KIPi dated 15.07.2010.
40. The Respondent at the end of producing the above documents told this Court to dismiss the present OS.
41. On cross-examination, the Respondent confirmed that he was the person in occupation of the suit property.
42. The Respondent stated that the suit property was a three bedroomed apartment.
43. The Respondent informed the Court that the Applicant wanted to evict him from the said suit property.
44. The Respondent admitted the jurisdiction of the Court over the dispute herein.
45. On being referred to PW 1 Exhibit 2 – the Respondent confirmed the advertisement shows that the occupants would be given priority to purchase the units for sale.
46. The Respondent confirmed that as on 10.05.2006, he was the person in occupation and use of the suit property.
47. The Respondent stated that the purchase price offered by the Applicant relating to the suit property was Kenya Shillings Two Million One Hundred Thousand (KShs 2,100,000/-) which amount was not acceptable to him.
48. Nevertheless, the Respondent deposited a sum of Kenya Shillings Four Hundred Thousand (KShs 400,000) with the Applicant just to avoid being harassed.
49. The Respondent informed the Court that since 2006 when he deposited the Kenya Shillings Four Hundred Thousand (KShs 400,000/-), he has never made any payments again.
50. On re-examination, the Respondent reiterated that he has never accepted the Offer For Sale from the Applicant.
51. The Respondent finished his testimony by stating that he just wanted to know the actual cost of the suit property before he would accept the offer for sale from the Applicants.
52. At the end of this re-examination, the Respondent was discharged from the witness box and there being no other witness, the Respondent closed his case.
53. The parties were duly directed to file their final submissions which directions were duly complied with.



54. The Court has duly gone through the pleadings herein, the testimonies of the parties, the documentary evidence produced therein and the final submissions and identify the following issues for determination; -

Issue No. 1- Has the applicant herein established issues to be addressed through 37 rule 3 of the civil procedure rules, 2010?

Issue No. 2 - Is the applicant entitled to the prayers sought in the present OS?

Issue No. 3- Is the present OS merited?

Issue No. 4 - Who bears the costs of the present OS?

55. The Court having duly identified the issues for determination as hereinabove, the same will be discussed below; -

**Issue No. 1- Has the applicant herein established issues to be addressed through 37 rule 3 of the civil procedure rules, 2010?**

56. The first issue for determination is whether or not the issues outlined in the present OS can be determined through the provisions of Order 37 Rule 3 of the Civil Procedure Rules, 2010 as read with Section 24 & 26 of the *Land Act*, No. 6 of 2012 as pleaded by the Applicants herein.

57. The provisions of Section 37 Rule 3 of the Civil Procedure Rules, 2010 provides as follows; -

“A Vendor or Purchaser of immovable property or their representatives respectively may, at any time, take out an Originating Summons returnable before the Judge sitting in chambers, for determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”

58. Based on the above proviso, this Court is of the considered view that the issues being raised by the Applicant are rather straight forward and do not deal with any questions relating to the existence and/ or validity of a Contract.

59. The reason why the Court takes this view is that from both the testimonies of the witnesses herein, the Offer of Sale which was presented to the Respondent by the Applicants was never accepted to form a relationship of a Vendor and a Purchaser over the suit property.

60. Similarly, according to the testimony of the Respondent, the deposit of Kenya Shillings Four Hundred Thousand (KShs 400,000/-) paid to the Applicant was never a deposit of the Purchase Price relating to the suit property.

61. In essence, there is no existence of any Contract between the Applicant and the Respondent and the validity of any terms therein does not arise.

62. The questions for determination in the present OS are therefore strictly about the Applicant's rights as the lawful owner of the suit property occupied by the Respondent.

63. The 1<sup>st</sup> question in the present OS is whether or not the Applicants are the lawful registered owners of the suit property herein.

64. According to PW 1, the Applicant herein is the successor in title of the suit property from defunct Nairobi City Council now Nairobi City County.



65. This fact was also admitted by the Respondent and therefore this Court hereby makes a finding that the Applicant is the lawful and registered owner of the suit property herein.
66. The second question for determination is whether or not the Applicant is entitled to vacant possession of the suit property.
67. According to PW 1, the Applicant herein offered to sale the suit property to the Respondent herein for a consideration of Kenya Shillings Two Million One Hundred Thousand (KShs 2,100,000/-).
68. The Offer for Sale by the Applicant was duly acknowledged by the Respondent in the hearing of the present OS.
69. However, the Respondent in both his Replying Affidavit and testimony at the hearing of the present OS admitted that he declined to accept the same.
70. The Respondent further admitted in both the Replying Affidavit and his testimony before the Court that he is the one in occupation and use of the suit property up to date.
71. It is not in dispute that the Respondent is in occupation of the suit property belonging to the Applicant without any executed Agreement for Sale and/or tenancy agreement.
72. The Respondent in his testimony stated that since be paid the sum of Kenya Shillings Four Hundred Thousand (KShs 400,000/-) way back in 2006, he has never paid any more funds either to settle the purchase price and/or meet the monthly rental payments.
73. As such, this Court is of the considered view and finding that the Respondent herein does not have any lawful ownership and/or occupation rights over the Applicant's suit property in the absence of a valid Agreement For Sale or subsisting Tenancy Agreement.
74. Consequently, the Applicant is entitled to vacant possession of the suit property as prayed for in this issue before the Court.
75. The third issue is whether or not the Respondent should be directed to hand over vacant possession of the suit property to the Applicant herein.
76. The Court having made a finding that there is no Agreement For Sale and/or subsisting Tenancy Agreement between the Applicant and the Respondent over the suit property, then the Applicant is entitled to enjoy the quiet possession, use and/or occupation of the said suit property.
77. In other words, the Respondent has no lawful occupational rights over the suit property in the absence of any lawful Agreement for Sale and/or subsisting Tenancy Agreement hence he should duly hand over vacant possession and/or occupation of the said suit property to the Applicants herein.
78. On the fourth issue, the Applicant is seeking for an Order of eviction against the Respondent in the event the Respondent fails to vacate and/or hand over vacant possession to the Applicant as directed by the Court.
79. Indeed, the Applicant should be enabled to enjoy the fruits of its judgement which includes vacant possession and/or occupation of the suit property.
80. In addition to the above, the Court should always ensure that Orders issued lawfully should be enforced whether with the concurrence of the losing party or not.



81. It is therefore proper that in the event the Respondent fails to comply with the Order of handing over possession of the suit property by giving vacant possession, the Court's Orders should be enforced through an eviction Order thereafter.

**Issue No. 3- Is the present os merited?**

82. Based on the determinations in Issue No. 2 hereinabove, this Court makes a finding that the present OS is merited and therefore allowed.

**Issue No. 4- Who bears the costs of the present os?**

83. On the issue of costs, the Applicant has been successful in litigating the present OS and the Respondent is condemned to pay costs.

**Conclusion**

84. In conclusion therefore, this Court makes the following Orders in determination of the present OS; -
- A. A declaration be and is hereby made that the applicant is the lawful and registered owner of the property known as house no. mf29h erected on the property known as lr.no.25980 commonly known as madaraka estate within nairobi county.
  - B. An order be & is hereby made that applicant is entitled to vacant possession of the property known as house no. mf29h erected on the property known as lr.no.25980 commonly known as madaraka estate within nairobi county.
  - C. The respondent be and is hereby directed to vacate, yield vacant possession, occupation & use of the property known as house no. mf29h erected on the property lr.no.25980 commonly known as madaraka estate within nairobi county within 120 days from the date of this judgement.
  - D. In the event the respondent fails to comply with order no. c hereinabove within the provided period of 120 days therein, an order of eviction will automatically be issued after the expiry of the 120 days period provided.
  - E. The respondent is also condemned to pay costs of this originating summons to the applicant herein.

**DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 18<sup>TH</sup> DAY OF MARCH 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In the presence of:

Court Assistant: Brian

Advocates for the Applicant: Mr. Kiprono

Advocates for the Respondent: In Person

