



Atinga v Ogumbo & 2 others (Environment and Land Miscellaneous Application E057 of 2024) [2025] KEELC 1274 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1274 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E057 OF 2024
SO OKONG'O, J
MARCH 13, 2025**

BETWEEN

JOHN OLUOCH ATINGA APPLICANT

AND

DALMAS ADERO OGUMBO 1ST RESPONDENT

OWISSO WINNIE STELLA 2ND RESPONDENT

GERALD ODHIAMBO OPONDO 3RD RESPONDENT

RULING

1. What is before me is a Notice of Motion application dated 19th November 2024 brought by the Applicant under Sections 152A, 152B, 152E and 152 F of the Land Act 2012 (as amended) and Sections 3 and 3A of the Civil Procedure Act seeking the following orders;
 1. That the notice to vacate dated 14th June 2024 issued to the Respondents be confirmed and the Respondents be evicted from all that parcel of land known as Title No. Kisumu/Wathorego/1852 (hereinafter referred to as “the suit property”) and the structures and other belongings of the Respondents on the suit property be demolished and removed;
 2. That the OCS Gita Police Station does provide security during the eviction of the Respondents and demolition of their structures;
 3. That the costs of the application be in the cause.
2. The application which is supported by the affidavits of the Applicant was brought on the ground that the Applicant is the lawful owner of the suit property and that his title to the property was confirmed by this court in a judgment delivered on 14th March 2024 in Kisumu ELCC No. 26 of 2019, John Oluoch Atingá v. Dalmas Adero Ogumbo and 7 others. The Applicant has averred that the Respondents have



failed, refused and/or neglected to vacate the suit property and to remove the structures and other properties that they have on the property despite the notices that were served upon them to do so.

3. The application was served upon the Respondents but none of them responded to the application. When the application came up for hearing on 28th January 2025, the advocate who appeared for the 2nd and 3rd Respondents herein in Kisumu ELCC No. 26 of 2019, John Oluoch Atingá v. Dalmas Adero Ogumbo and 7 others, appeared in court and told the court that he was yet to receive instructions from his clients on the application. He, however, did not ask the court for more time to respond to the application. The application was therefore not opposed by any of the Respondents. The advocate for the Applicant relied entirely on the grounds on the face of the application and the supporting affidavits and urged the court to allow the application.
4. As mentioned earlier, the Applicant's application has been brought under Sections 152A, 152B, 152E and 152 F of the Land Act 2012 (as amended) which provide as follows:

152A. Prohibition of unlawful occupation of land.

A person shall not unlawfully occupy private, community or public land.

152B. Evictions to be undertaken in accordance with the Act.

An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.

152E. Eviction Notice to unlawful occupiers of private land.

(1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) The notice under subsection (1) shall –

- (a) be in writing and in a national and official language;
- (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
- (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
- (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.

152F. Application to Court for relief.

(1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E may-

- (a) confirm the notice and order the person to vacate;
- (b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;



- (c) suspend the operation of the notice for any period which the court shall determine; or
- (d) order for compensation.

5. Section 152 G of the [Land Act](#) 2012 (as amended) provides as follows:

Mandatory procedures during eviction.

(1) Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict compliance with the following procedures-

- (a) be preceded by the proper identification of those taking part in the eviction or demolitions;
- (b) be preceded by the presentation of the formal authorizations for the action;
- (c) where groups of people are involved, government officials or their representatives to be present during an eviction;
- (d) be carried out in a manner that respects the dignity, right to life and security of those affected;
- (e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
- (f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- (g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
- (h) respect the principles of necessity and proportionality during the use of force; and
- (i) give the affected persons the first priority to demolish and salvage their property.

6. The foregoing provisions of the [Land Act](#) 2012 provide for the evictions of persons occupying land unlawfully. Section 152A of the [Land Act](#) 2012 (the Act) prohibits unlawful occupation of land, be it private, public or community land. Section 152E of the Act provides that a person unlawfully occupying private land may be served with a notice to vacate. Section 152F provides for relief against a notice of eviction. It gives the person served with a notice a right to apply to court for whatever relief deemed appropriate in the circumstances. The court, upon considering the application, may give appropriate relief. Among the reliefs the court can give are cancellation, variation or suspension of the notice. The court can also order compensation to be paid. In addition to the said reliefs, the court also has the power to confirm the notice and order the eviction of those in illegal occupation of land.

7. In the case before me, the Respondents have not denied that after the judgment in Kisumu ELCC No. 26 of 2019, John Oluoch Atingá v. Dalmas Adero Ogumbo and 7 others, they were served with notices by the Applicant to vacate the suit property. The Respondents did not move the court for relief as provided for under Section 152F of the [Land Act](#). I am of the view that since Section 152F of the



Act empowers the court to grant relief to the person served with an eviction notice and also to confirm the notice and order eviction, it is not inconsistent with the Act for the person issuing the notice to apply to the court for confirmation of the notice and an eviction order where the person served with the notice has failed to vacate the land or seek relief from the court.

8. I am satisfied from the material before me that the Applicant is the lawful owner of the suit property. The Applicant has placed before the court the judgment that was delivered by this court on 14th March 2024 in Kisumu ELCC No. 26 of 2019, John Oluoch Atingá v. Dalmas Adero Ogumbo and 7 others (hereinafter referred to only as “the earlier suit”) in which the court declared the Applicant the lawful owner of the suit property. The Respondents were parties to the earlier suit. There is no evidence that the judgment in the earlier suit has been stayed, varied or set aside. The Respondents are bound by that judgment.
9. The Respondents have not responded to the application. They have therefore not given any justification for their continued occupation of the suit property, which to their knowledge the court had declared to be owned by the Applicant. The Applicant has, therefore, proved that the Respondents are unlawfully occupying the suit property and that the Respondents were served with an eviction notice and have refused to comply with the said notice without any lawful cause.
10. Due to the foregoing, it is my finding that a case has been made for the granting of the orders sought in the application dated 19th November 2024. I therefore make the following orders in the matter;
 1. The Respondents shall vacate and handover vacant possession of all that parcel of land known as Title No. Kisumu/Wathorego/1852 (the suit property) within 60 days from the date hereof in default of which the Deputy Registrar of this court shall issue warrants for the forceful eviction of the Respondents from the suit property and demolition of the structures that they have put up on the property if they would not have removed the same by themselves from the suit property within the period given herein.
 2. The Officer Commanding Gita Police Station(OCS) shall supervise the eviction exercise and shall provide the necessary security to the Court Bailiff/Auctioneer undertaking the exercise.
 3. During the eviction of the Respondents, the Applicant and the Auctioneer/Court Bailiff carrying out the exercise shall comply strictly with Section 152G of the *Land Act* 2012.
 4. The Applicant shall extract and serve the orders issued herein upon the Respondents through; the area chief, by affixing a copy on the same on the structures or properties that the Respondents have on the suit property, and shall also publish it once on either the Daily Nation or the Standard Newspapers on a weekday.
 5. The Applicant shall file in court an affidavit(s) of service of the order in compliance with Order Number 4 above, which affidavit(s) shall be a condition precedent to the warrants of eviction being issued.
 6. Each party shall bear its costs of the application.

DELIVERED AND DATED AT KISUMU ON THIS 13TH DAY OF MARCH 2025

S. OKONG’O

JUDGE

Ruling delivered through Microsoft Teams Video Conferencing platform in the presence of;

Mr. Akello for the Applicant



N/A for the Respondents

Ms. J.Omondi-Court Assistant

