



Corline v Maswii & another (Environment and Land Miscellaneous Application E042 of 2022) [2023] KEELC 21571 (KLR) (14 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E042 OF 2022
MN GICHERU, J
NOVEMBER 14, 2023**

BETWEEN

ANTHONY CORLINE APPLICANT

AND

JACKSON MUTUA MASWII 1ST RESPONDENT

DAMARIS MULEE MUTUNGA 2ND RESPONDENT

RULING

1. This ruling is on the notice of motion dated 25/10/2022. The motion which is by the Applicant is brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, 152 A – F of the *Land Act* and Regulation 65 of Legal Notice No. 280 of 2017 (Land Regulations) and Order 51 Rules 1 and of the Civil Procedure Rules and all other enabling provisions of the law.
2. The motion seeks the following orders.
 1. Eviction of the Respondents from L.R. Kajiado/Kitengela/35394 and vacant possession to the Applicant.
 2. The eviction to be carried out by ICON Auctioneers/Bailiffs.
 3. The officer commanding Isinya Police Station to provide security and to maintain law and order during the eviction.
 4. The costs be borne by the Respondents.
3. The motion is based on fourteen (14) grounds and is supported by an affidavit sworn by the Applicant to which there are several annexures attached. The gist of the above material is as follows.

Firstly, the Applicant is registered owner of L.R. 25394, suit land, which he purchased in a public auction on 8/4/2021.



4. Secondly, the Respondents were the previous owners of the suit land who charged it with I and M Bank Limited. They defaulted in repaying the loan advanced to them by the bank as a result of which the Bank sold the land to the Applicant.
5. Thirdly, despite being served with the mandatory notice on 23/5/2022 by email, registered post and also physically, the Respondents have failed to comply making this motion necessary.
6. Fourthly, the notice of motion to vacate was also served upon the Deputy County Commissioner Isinya Sub County and the Officer Commanding Police Division Kajiado by a court process server by the name Faith Mwihaki.
7. Finally, there is no other option to enable the Applicant exercise his proprietary rights other than the forceful eviction of the Respondents who have refused to vacate peacefully and who may be unlawfully dealing with the suit property such as to defeat the Applicant's interest.
8. The motion, though served is not opposed. It had originally been filed to proceed ex parte but on 15/4/2022, I ordered that it be served physically on the Respondent. That was done on 7/12/2022 as per the affidavit of Faith M. Kihara dated 4/1/2023.
9. Counsel for the Applicant filed written submissions dated 12/5/2023 in which he identified three issues of determination as follows.
 - a. Whether the Applicant is the registered owner of the suit property pursuant to sale by the chargee.
 - b. Whether the Applicant is entitled to the orders sought.
 - c. Who should bear the costs.
10. I have carefully considered the motion in its entirety including the grounds, affidavit in support, annexures, the submissions and the law cited thereon. I find the issues as identified will resolve the dispute. I make the following findings.

On the first issue, I find that the Applicant is the registered owner of the suit land pursuant to sale by a chargee. In reaching this conclusion, I have relied on the Applicant's annexures which include the copy of title deed dated 30/3/2022, the copy of certificates of official search and the transfer pursuant to sale by chargee in a public auction dated 31/8/2021. There are other documents attached but the three above will suffice.
11. On the second issue, I find that the Respondents unlawfully occupy the Applicant's land because they occupy it without his permission and in spite of the notices issued to them to vacate. I also find that the requisite notice has been issued in accordance with section 152E of the Land Act and they persist in the unlawful occupation. They have not bothered to appear in court and explain why they continue occupying private property without the owner's consent.

For the above stated reasons, I allow the motion dated 25/11/2022 and order that the Respondents be evicted from the suit land without further notice.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 14TH DAY OF NOVEMBER, 2023.

M.N. GICHERU
JUDGE

