



**Diani Square Limited v Lepele & 14 others (Operating under the banner of Kaskiza Jua Kali Traders) (Environment & Land Case 23 of 2020) [2022] KEELC 3684 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3684 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 23 OF 2020  
NA MATHEKA, J  
JULY 27, 2022**

**BETWEEN**

**DIANI SQUARE LIMITED ..... PLAINTIFF**

**AND**

**JACQUELINE LEPELE ..... 1<sup>ST</sup> DEFENDANT**  
**THOMAS AMIGO MARONDE ..... 2<sup>ND</sup> DEFENDANT**  
**JOSEPHAT MBITHITITO ..... 3<sup>RD</sup> DEFENDANT**  
**DANIEL NYANGA ..... 4<sup>TH</sup> DEFENDANT**  
**FRANCIS KIRINGA ..... 5<sup>TH</sup> DEFENDANT**  
**MARTIN MURUNGU ..... 6<sup>TH</sup> DEFENDANT**  
**MUTUA KYULI ..... 7<sup>TH</sup> DEFENDANT**  
**GIDEON KIILU ..... 8<sup>TH</sup> DEFENDANT**  
**KANGENDO MUSEE ..... 9<sup>TH</sup> DEFENDANT**  
**HUDSON OMWERI MAMA ROSE ..... 10<sup>TH</sup> DEFENDANT**  
**STEPHEN KINARA ..... 11<sup>TH</sup> DEFENDANT**  
**MWANGANGI NGONZI MULANDI ..... 12<sup>TH</sup> DEFENDANT**  
**CHARLES ONYONI ..... 13<sup>TH</sup> DEFENDANT**  
**LEAH MULWA ..... 14<sup>TH</sup> DEFENDANT**  
**MAMA HELLEN & OTHERS ..... 15<sup>TH</sup> DEFENDANT**  
**OPERATING UNDER THE BANNER OF KASKIZA JUA KALI TRADERS**



## RULING

1. The application is dated March 10, 2022 and is brought under order 22 rule 29 of the *Civil Procedure Rules*, sections 1A, IB and 3A of the *Civil Procedure Act*, sections 14 and 19 of the *Environment and Land Court* seeking the following orders;
  1. That this application is certified urgent and be heard on a priority basis with service of the Application being dispensed with.
  2. That this Honourable Court is pleased to issue orders for the immediate eviction of the Defendants from the property described as Kwale/Diani Beach Block/155 (“Suit Property”) located in Diani, Kwale County in compliance with this Honourable Court’s Decree and order issued on 25<sup>th</sup> November 2021.
  3. That this Honourable Court is pleased to direct the Officer Commanding Diani Police Division or Station to enforce Order No. 1 by providing security to the Plaintiff while evicting the defendants from the suit property; and
  4. That the costs of this application are borne by the defendants.
2. It is based on the following grounds that the plaintiff is the registered proprietor of the suit property measuring four decimal two five five hectares (4.255 Ha) with a valid lease of Ninety- Nine years commencing from January 1, 1979. That this Honourable Court delivered a judgment on 23<sup>rd</sup> September 2021 and ordered that the Defendants vacate and render an immediate quiet and vacant possession of the suit property to the Plaintiff within sixty days from the day of service of the Decree upon them. That in default of compliance, the Plaintiff would be entitled to obtain an eviction order to enable it remove the defendants and demolish structures constructed within the suit property by the defendants. That the defendants were duly served with the Decree on November 29, 2021. Despite being served, the defendants have failed to vacate the suit property within sixty (60) days leading to the filing the instant application. That the plaintiff desires to enter and develop the suit property and which development cannot be undertaken until the defendants are evicted as they seem keen and intent on occupying the same in perpetuity. That unless this Court grants the Orders sought. The defendants will continue to offend the Plaintiff’s constitutional rights since the latter cannot undertake any meaningful and profitable venture. The plaintiff will therefore continue to lose any anticipated income and mesne profits for the continued period of illegal occupation of the suit property. That it will be in the interest of justice to grant the plaintiff the orders sought.
3. This court has considered the application and the supporting affidavit therein. The respondents were served but failed to file any response to the application. The application is that the plaintiff is the registered proprietor of the suit property measuring four decimal two five five hectares (4.255 Ha) with a valid lease of Ninety- Nine years commencing from January 1, 1979. That this Honourable Court delivered a judgment on September 23, 2021 and ordered that the Defendants vacate and render an immediate quiet and vacant possession of the suit property to the Plaintiff within sixty days from the day of service of the Decree upon them. The Plaintiffs are have failed to obey the court order hence this application. I have perused the court record and find that Justice Yano; judgment was delivered on September 23, 2021 it and ordered that the defendants vacate and render an immediate quiet and vacant possession of the suit property to the Plaintiff within sixty days from the day of service of the Decree upon them. I find this application is merited and I grant the following orders;



1. That the defendants vacate the suit property known as Kwale/Diani Beach Block/155 located in Diani, Kwale County in compliance with this Honourable Court's Decree and order issued on November 25, 2021 within the next 30 days of service of this order and in default eviction order to issue forthwith.
2. The Officer Commanding Diani Police Division or Station to supervise the eviction.
3. Costs to the Applicant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27<sup>TH</sup> DAY OF JULY 2022.**

**N.A. MATHEKA**

**JUDGE**

