



**Juma v Njeru (Environment and Land Miscellaneous Application  
9 of 2021) [2022] KEELC 15706 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15706 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 9 OF 2021  
EC CHERONO, J  
JULY 27, 2022**

**BETWEEN**

**BADURU JUMA ..... APPLICANT**

**AND**

**ALLAN NJERU ..... RESPONDENT**

**RULING**

1. The applicant moved this court by way of an *ex-parte* notice of motion dated December 10, 2021 seeking the following orders: -
  - a. That this honourable court be pleased to endorse notice of eviction (hereinafter referred to as “eviction notice”) dated August 30, 2021 by ordering eviction of the respondent(s) from land reference number Kabare/Nyangati/735 (hereinafter referred to as “suit land”).
  - b. That this honourable court be pleased to direct the Officer Commanding Station (OCS) Kutus Police Station to provide security during the eviction process.
  - c. That the applicant be at liberty to instruct his preferred licensed court bailiff or auctioneers in execution of eviction process herein.
  - d. That costs of this application be provided for.
2. The application is premised on grounds set out on the face of the said application and the supporting as well as a supplementary affidavit both sworn by the applicant on December 10, 2021 and February 14, 2021 respectively.
3. The application is opposed by way of a notice of preliminary objection and a replying affidavit dated and sworn on January 12, 2022.



4. When the application came up for hearing on January 19, 2021 the parties agreed to dispose of the same by way of written submissions.
5. The applicant filed his submissions on February 28, 2022 while the respondent failed to file his submissions within the timelines given.

**Applicant's Case And Submissions: -**

6. The applicant's case is that he is the absolute registered proprietor and owner of land reference number Kabare/Nyangati/735 measuring 8 acres, having acquired it through first registration on June 15, 1968.
7. He stated that the respondent unlawfully entered and occupied various portions of the suit land and all oral pleas/demands to vacate went unheard which prompted him to issue an eviction notice.
8. He stated that a 90 days' notice of eviction was issued and served upon the respondent personally and after the lapse of the said period, the respondent still refused to vacate and hand over vacant possession.
9. He stated that the respondent did not seek appropriate remedy before the lapse of the eviction notice. As such, the respondent has no valid defence to this suit.
10. He stated that when considering eviction notice vis-à-vis other reliefs sought, the current regime is in favour of enforcing the eviction notice.
11. He prayed that this honourable court finds the eviction notice dated August 30, 2021 to have crystallized and proceed to endorse the same by allowing the application for eviction as prayed.
12. He further stated that he was present when the respondent was served with the eviction notice and that his land has never been subject to any lawful compulsory acquisition since his registration on June 15, 1968.
13. He stated that the respondent has not laid any basis for claiming his land but spoke of a different, separate and distinct plot with different registration particulars.
14. He stated that his title is not subject to challenge on grounds of fraud or misrepresentation or illegal, unprocedural and corrupt scheme and the respondent cannot therefore lay claim based on sections 26 (1) of the [Land Registration Act](#).
15. He submitted that the provisions of sections 2 and 19 of the [Civil Procedure Act](#) provides that suits may be instituted in such a manner as may be prescribed by the rules and that these proceedings have been commenced under the provisions of the [Land Act](#).
16. He submitted that these proceedings are substantively and procedurally anchored and brought in accordance with the rules governing the institution of suits.
17. He submitted that the jurisdiction of the court is provided under article 162 (2) and 165 (5) of the [Constitution](#) and the provisions of the [Environment and Land Court Act](#), No 19 of 2011.
18. He submitted that he had demonstrated that he is the registered proprietor of the suit land and the allegations that the same is subject to compulsory acquisition is unfounded and not admissible in evidence. He relied in civil appeal No 56 & 58 consolidated, [Chief Land Registrar & 4 others v Nathan Tirop Koeh & 4 others](#) (2018) e KLR.
19. He further submitted that the substantive form and particulars were complied with when the notice of eviction was issued.



20. He submitted that the suit land has never been a subject of compulsory acquisition and neither has its registration been subject to any challenge or successful claim from any person or authority.
21. He stated that the allegation of the same being allocated or conveyed by any person or authority is not true.
22. He relied on the cases of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] e KLR, *Republic v Minister for Transport & Communication & 5 others Ex Parte Waa Ship Garbage Collector & 15 others* Mombasa HCMCA No 617 of 2003 [2006] 1 KLR (E&L) 563 and *Mureithi & 2 others [for Mbari ya Murathimi Clan] v Attorney General & 5 others* Nairobi HCMCA No 158 of 2005 [2006] 1 KLR 443.
23. He also submitted that to succeed in such an application before court, he only needs to demonstrate ownership of the suit land and that he has duly served the eviction notice as required under the law.
24. He submitted that the respondent will not suffer any prejudice or loss since allowing the application will be enforcing and allowing the full enjoyment of his constitutional and statutory rights.

**Respondent's Case: -**

25. The respondent raised a preliminary objection based on the following grounds:
  - a. The pleading as filed herein is incurably defective and ought to be struck out for offending sections 2 and 19 of the *Civil Procedure Act* as well as order 3 of the *Civil Procedure Rules, 2010*.
  - b. He submitted that the court lacks jurisdiction to entertain the matter for it should have been filed in the Chief Magistrate's Court in the first instance.
  - c. He submitted that the suit is vexatious and frivolous and amounts to gross abuse of the court process and the same should be struck out with costs to the respondent.
26. The respondent further stated that he was not served with the notice of eviction and prayed that the process server be re-called for purposes of being cross- examined.
27. He stated that sometimes in 1976, the defunct Kirinyaga County Council compulsorily acquired the suit land for purposes of extension of Kutus Township and thereafter, the same was subdivided and allocated to numerous applicants.
28. He stated that after acquisition, the defunct County Council of Kirinyaga failed to cancel the title but only placed a restriction which was later removed through dubious means.
29. He stated that he bought plot No 64A from Mwiukiriria Mwhiteithia & Company Self Help Group which was excised from the suit property and that the application for transfer was approved by the Council Housing Committee on the January 29, 2009.
30. He stated that he has been in possession and occupation of the plot since allocation and he even sought building approval from the Ministry of Lands, Housing and Urban Development to develop his plot.
31. He stated that 12 years have lapsed since he entered occupation and has been paying rates in respect to the plot and has also developed it.
32. He prayed that the application be dismissed.



**Analysis: -**

33. I have considered the application, the parties' affidavits, rival submissions and the applicable law. I will first consider the preliminary issues that have been raised by the respondent.
34. I will start with the issue of jurisdiction. Jurisdiction according to the *Concise Oxford English Dictionary* is defined as the territory or sphere over which the legal authority of a court or other institution extend. Jurisdiction flows from the *Constitution* or statute. It has been held in numerous decisions that jurisdiction is everything and without it, a court has no power to move a step further and is supposed to down its tools.
35. In determining the issue of jurisdiction, the Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* held as follows:
- “..... A court can only exercise jurisdiction that has been donated to it by either the *constitution* or legislation or both. Therefore, it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
36. The jurisdiction of this honourable court is derived from section 13 of the *Environment and Land Court Act* No 19 of 2011 which provides that:
- “(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under article 162(2)(b) of *Constitution*, the court shall have power to hear and determine disputes— (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”
37. It is evident from the above provision of the law that this court is vested with jurisdiction to determine land matters. However, those matters are subject to the statute of limitation. This is because limitation of actions goes to the jurisdiction of the court.
38. The limitation period in regard to an action to recover land is provided for under section 7 of the *Limitation of Actions Act*, which provides as follows:-
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, it first accrued to some persons through whom he claims, to that person”.
39. The provisions of the *Land Act*, No 3 and any other laws governing the administration of land and the Environment in Kenya are subject to the *Limitation of Actions Act*, cap 22 Laws of Kenya.



40. From the material placed before me, it is alleged that the respondent entered occupation of the suit land in the year 2009. Clearly, the limitation period within which the applicant was supposed to recover the land is contested as the respondent avers that the same had already lapsed by the time the eviction notice was issued.
41. It is therefore my view that the respondent in his opposition has raised very weighty issues which require to be determined by substantive suit and not a miscellaneous application.
42. This being the case, I find the notice of preliminary objection dated January 12, 2022 is merited and the applicant's suit commenced by way of an ex parte notice of motion dated December 6, 2021 is hereby struck out for being frivolous, vexatious and an abuse of the court process. Each party to bear their own costs.

**RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 27<sup>TH</sup> MAY, 2022.**

.....  
**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of;-

Makura for the Respondent---present

Macharia Wambui for the Applicant---present

Kabuta, C/A ---present.

