



REPUBLIC OF KENYA



KENYA LAW
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**Dzimba v Hassan (Miscellaneous Application E093 of 2024)
[2025] KEELC 4283 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4283 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
MISCELLANEOUS APPLICATION E093 OF 2024**

YM ANGIMA, J

JUNE 5, 2025

BETWEEN

MOHAMED JUMA DZIMBA APPLICANT

AND

SWALEH ABDALLA HASSAN RESPONDENT

RULING

1. By a notice of motion dated 04.12.2024 filed pursuant to Order 50 of the Civil Procedure Rules, Section 152 E and 152 F of the *Land Act*, Section 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21), Article 40 of *the Constitution* and all other enabling provisions of the law the applicant sought the following orders;
 - a. Spent
 - b. That this honourable court be pleased to confirm the eviction notice dated 6th August 2024 and the respondent ordered to vacate and give possession of the all the parcel of land Plot No. 9/XVI/31.
 - c. That Fantasy Auctioneers Mombasa do effect and execute the above eviction order.
 - d. The Officer Commanding Station (OCS) Makupa Police Station and/or the Deputy County Commander Mombasa County do ensure compliance.
 - e. That the costs of this application be provided.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the applicant on even date. The gist of the application was that the applicant was the legitimate owner of Title No. 9/XVI/31 located in Majengo in Mombasa County and that in spite of a decree dated 02.02.2016 in Mombasa CMCC No.1246 of 2007 directing the respondent to hand over possession of the suit property the latter had failed to vacate the same. It was



contended that the respondent had been served with relevant notices dated 24.07.2024 under Section 152E of the *Land Act* but had failed to vacate thereby rendering the filing of the instant application necessary.

3. The respondent filed a replying affidavit sworn on 10.01.2025 in opposition to the application. The respondent dwelt on the history of the previous litigation between the parties and contended that he intended to appeal against a previous decision of the Magistrate's Court dated 20.02.2024 holding him in contempt of court for refusing to abide by the decree dated 02.02.2026. He further stated that he had sought leave of court to appeal against the said decision in the Mombasa ELC Misc. Application No.86 of 2024.
4. It was the respondent's contention that since he has a pending application for leave to appeal out of time against the decision holding him in contempt of court then the instant application was premature as it ought to await the outcome of his said application. A perusal of the court file in Misc. Application No.86 of 2024, however, reveals that said application was dismissed by this court on 27.02.2025.
5. The court has considered the material and submissions on record. The court is of the view that the sole issue for determination herein is whether or not the applicant has made out a case for the grant of the orders sought in the motion dated 04.12.2024. There is no contest that the applicant has a decree in his favour which was passed on 02.02.2016. There is no dispute that the said decree has never been overturned on appeal or review. There is no contest that the respondent was found guilty of contempt of court for failing to comply with the terms of the decree. It is also evident from the material on record that the respondent has no pending appeal either against the decree or the order holding him in contempt of court.
6. The court is thus satisfied that the applicant is entitled to enjoy the fruits of his judgment and that he is entitled to succeed in his application. The court is not satisfied that the respondent has demonstrated any legitimate reason to keep the applicant out of the suit property.
7. The upshot of the foregoing is that the court finds merit in the applicant's motion seeking eviction of the respondent. As a consequence, the court hereby allows the notice of motion dated 04.12.2024 in terms of Order Nos. 2, 3 and 4 thereof. The applicant is also awarded costs of the application to be borne by the respondent

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5TH DAY OF JUNE, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Nyawira for the applicant

Mr. Salim for the respondent

